I demand that adequate Central grants should also be released to Jharkhand for prevention, control and cure of TB, Malaria and other vector-borne diseases.

MR. DEPUTY CHAIRMAN: Dr. Chhattrapal Singh Lodha, not present. Dr. Anbumani Ramdaoss to introduce the Bills.

GOVERNMENT BILLS

The Homoeopathy Central Council (Amendment) Bill, 2005

THE MINISTER OF HEALTH AND FAMILY WELFARE (DR. ANBUMANI RAMADOSS): Sir, I beg to move for leave to introduce a Bill further to amend the Homoeopathy Central Council Act, 1973.

The question was put and the motion was adopted.

DR. ANBUMANI RAMADOSS: Sir, I introduce the Bill.

The Indian Medicine Central Council (Amendment) Bill, 2005

THE MINISTER OF HEALTH AND FAMILY WELFARE (DR. ANBUMANI RAMADOSS): Sir, I beg to move for leave to introduce a Bill further to amend the Indian Medicine Central Council Act, 1970

The question was put and the motion was adopted.

DR. ANBUMANI RAMADOSS: Sir, I introduce the Bill.

STATUTORY RESOLUTION

Seeking disapproval of the Patents (Amendment) Bill, 2005

MR. DEPUTY CHAIRMAN: Statutory Resolution, the Patents (Amendment) Bill, 2005 Dr. Murli Manohar Joshi to move.

SHRI NOLOTPAL BASU (West Bengal): Sir, before Dr. Joshi starts, I would like to say that my notice had been given when the Ordinance was there. Now, that the Bill has come, as passed by the Lok Sabha, and we are considering that Bill, I am not moving that disapproval motion.

श्रीमती सुषमा स्वराज : (उत्तरांचल) **:** उपसभापति महोदय, मेरा एक प्रस्ताव हैं कि इस बिल पर कंसिडरेशन ही न हो। आज की कार्यसूची में पेटेंट संशोधन विधेयक, 2005 चर्चा और पारित करने के लिए रखा गया है। यह विधेयक बहुत दूरगामी प्रभावों वाला विधेयक है, लेकिन सदन के नियमों में ढ़ील देकर आज जल्दबाजी में इसे चर्चा के लिए रखा गया है। मैं प्रस्ताव करती हूं कि

आज इस पर चर्चा स्थगित की जाए और इसी सत्र के दूसरे खंड में इसे चर्चा के लिए लाया जाए, ताकि सार्थक चर्चा हो सके।

उपसभापति जी, आप जानते हैं कि आज का दिन इस सत्र के सरकारी कार्य का आखिरी दिन है, कल बृहस्पतिवार को हमने प्राइवेट मेंबर्स के बिज़नेस के लिए परिवर्तित कर दिया है और आज आखिरी दिन यह बिल सरकार की जिद के कारण लाया जा रहा है...(**व्यवधान**)... मैं अपनी बात कह दूं, ये लोग अपनी – अपनी बात कहेंगे। आपने मुझे अनुमति दी है, मुझे शांति से अपनी बात कह लेने दीजिए।

उपसभापति जी, जिस बिल पर देश में महीनों – महीनों चर्चा होनी चाहिए थी, जिस बिल पर प्रभावित होने वाले वर्गो की सुनवाई होनी चाहिए थी, जिस बिल पर लोक सभा और राज्य सभा में कम से कम दो – तीन बहस होनी चाहिए थी, वह बिल संसदीय प्रक्रियाओं को धता बताकर आज सदन में पारित करने के लिए रखा गया है। मैं आपके माध्यम से सरकार से कहना चाहती हूं, सरकार के सबसे वरिष्ठ मंत्री, हमारे रक्षा मंत्री यहां बैठे हुए हैं, मैं उनसे कहना चाहती हूं कि लोकतंत्र में हठधर्मिता का कोई स्थान नही होता। लोकतंत्र के मायने ही ये हैं कि आपसी सलाह – मशविरे से काम हो, लोकतंत्र के मायने ही ये हैं कि सरकार अपनी मन – मर्जी न चलाए, बल्कि विपक्ष के मत का सम्मान करें। मैं आपसे पूछना चाहती हूं, कि आखिर आपको जल्दी क्या है इस बिल को पारित कराने की ? आप जवाब देंगे कि हमारी अंतर्राष्ट्रीय वचनबध्दता थी कि एक जनवरी, 2005 से product patent भारत में लागू हो, हमने वह वचनबध्दता एक अध्यादेश के जरिए पूरी की और वह अध्यादेश 8 अप्रैल को समाप्त हो जाएगा, तब सत्र नही चल रहा होगा, इसलिए यह जरूरी है कि यह बिल इस सत्र में पारित हो। जैसा कि मैंने स्वयं कहा कि यह सरकारी कामकाज का आखिरी दिन है, इसलिए इसे आज ही पारित होना है, यही आपका जवाब होगा। मैं आपसे एक प्रश्न करती हूं कि क्या यह जानकारी आपको आज मिली है कि एक जनवरी, 2005 से हमारी वचनबध्दता थी? पिछले 10 वर्षो से यह बात देश को भी मालूम है, पिछले 10 वर्षो से यह बात विभिन्न सरकारों को भी मालूम है। इस वचनबध्दता को सामने रखते हुए दिसंबर , 2003 में हम बिल ले आए थे, बिल लाकर हमने स्टैडिंग कमेटी को भेज दिया था, क्योंकि हम चाहते थे कि इतने दूरगामी प्रभावों वाले बिल पर सारे देश में बहस होनी चाहिए, इस पर एक राष्ट्रीय बहस छिड़नी चाहिए। स्टैडिंग कमेटी उन तमाम लोगों को बुलाकर सुने, किसानों को सुने, फार्मेस्युटिकल इंडस्ट्रीज को सुने, NGOs को सुने, जो वर्ग इससे प्रभावित होने वाले हैं, वह उनकी सुनवाई करे और उसके बाद अपना मत, अपनी सहमति दें, क्योंकि स्टैडिंग कमेटी किसी दल विशेष की नही होती , पूरे देश की सहमति से जो संशोधन सुझाने हैं, सुझाए और उसके बाद एक संशोधित बिल सरकार यहां लेकर आए। आज आप कहते हैं कि आप इसे अध्यादेश के जरिए, लाए तो यह स्थिति किसके द्वारा बनाई गई? यह स्थिति आपके द्वारा क्रियेट की गई है, यह स्थिति आपने निर्मित की हैं और आप इस निर्मित स्थिति का फायदा उठाकर एक Fate accomplice situation आप हमारे सामने खडी कर रहे है, लेकिन मैं रक्षा मंत्री से कहना चाहूंगी कि हम जिम्मेदार विपक्ष हैं, इसलिए हम यह नही कहते कि आपने

चूक कर दी, इसलिए आपकी आलोचना करके अपनी जिम्मेदारी से विपक्ष बरी हो जाएगा, हम यह नही कहते हैं । अगर आपने चूक कर दी हैं, तो भी मिल – बैठकर रास्ता निकालना चाहिए । वह रास्ता हमने आपको सुझाया है । हमने आपसे कहा कि आपने एक अध्यादेश जारी किया है, वह अध्यादेश 8 अप्रैल को समाप्त हो जाएगा, आपके पास कोई कानून नही होगा, अंतर्राष्ट्रीय जगत में आपकी किरकिरी, होगी, वह किरकिरी सरकार की नही होती, देश की किरकिरी होती है, इसलिए हमने आपको रास्ता सुझाया कि अध्यादेश जारी करने के लिए संविधान का आर्टिकल 123 यह कहता है कि अगर एक सदन न बैठा हुआ हो, तो अध्यादेश जारी किया जा सकता है । हमने कहा कि कल जब सभा उठेगी तो आप राज्य सभा की सभा को अनिश्चितकाल के लिए स्थगित कर दीजिए, prorogue कर दीजिए और prorogue करने के बाद अध्यादेश वापस जारी कर दीजिए और इस बीच में यह बिल स्टैडिंग कमेटी को भेज दीजिए या सेलेक्ट कमेटी को भेज दीजिए, जो मत बने, उसके मुताबिक नया बिल लेकर आ जाइए, लेकिन आपने कहा कि आपको यह भी मंजूर नही है। रक्षा मंत्री जी, यह राजहठ की पराकाष्ठा है । इतनी जिद, इतना हठ, यह लोकतंत्र के अनुरूप नही है । इसलिए मैं आपसे कहना चाहती हूं, एक आखिरी अपील के तौर पर मैंने यह प्रस्ताव दिया है, उपसभापति जी, कि चलिए, एक अन्तिम अपील आपसे कर दूं । शायद अभी भी ईश्वर आपको सदबुध्दि दे दें और मैं आपसे यह अपील करना चाहती हूं, सदन के माध्यम से कि रक्षा मंत्री जी और स्वयं मंत्री जी बैठे हैं और यह ...(**व्यवधान**)... उपसभापति जी ...(**व्यवधान**)...

श्री उपसभापति : सुन रहे हैं ...(**व्यवधान**)... अहलुवालिया जी, आप बैठिए ...(**व्यवधान**)...

श्रीमती सुषमा स्वराज : उपसभापति जी, हमें जानकारी मिली है कि आज मंत्री जी भी बिज़ी है । वे आईएमएफ के किसी मीटिंग या कान्फरेंस में जाने वाले हैं, वे दो से चार बजे के बीच यहां नही रहने वाले है, यानी वे दो घंटे चर्चा में भी नही होंगे । उन्हें जल्दी जाना है तो कितना अच्छा हो कि वे अपनी कांफेरेंस को अटेंड करें और उस कांफरेंस को अटेंड करने के बाद आज यह सदन उठ जाएगा तो इसी सत्र के दूसरे खंड में बिल ले आइए । हम सार्थक चर्चा करेंगे? हम अंतर्राष्ट्रीय वचनबध्दता का पालन करेंगे, हम आपको सहयोग करेंगे, लेकिन कम – से – कम एक बडी चर्चा तो हो जाए । अभी तो हम संशोधन तक देने के लायक नही रहे । 8.30 बजे लिफाफा आया और उसमें सूचना थी कि 10 बजे तक संशोधन दीजिए । जो बिल आपने भेजा है, उसमें क्लॉजेज़ के ऊपर आपने नोट्स तक नही भेजा, सारी संसदीय प्रक्रियाओं की आप अवहेलना कर रहे है और नियमों में ढ़िलाई देकर इस बिल को ला रहे है, मंत्री जी की अनुपस्थिति में चर्चा करवा रहे है और बिल को पारित करवा रहे है । मैं आपसे पुनः प्रार्थना करती हूं कि आप हमारी बात मान लीजिए और संसद सत्र के दूसरे खंड में बिल को ले आइए, तब हम इस पर चर्चा करके इसे पारित करेंगे । बहुत – बहुत धन्यवाद ।

SHRI NILOTPAL BASU: Mr. Deputy Chairman, Sir, Sushmaji has raised certain issues of procedures, and, we, being natural party of the Opposition, have been frequently using that logic. But I am on a question of facts. I have before me, Sir *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI (Uttar Pradesh): Sir, without my disapproval of the Statutory *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: No, no *...(Interruptions)...* It is not on this *...(Interruptions)...* Not on this, नही, अभी नही, आपने मूव नहीं किया है...(व्यवधान)...

DR. MURLI MANOHAR JOSHI: Sir, how can anybody speak *...(Interruptions)...*

SHRI S. S. AHLUWALIA (Jharkhand): Sir, the issue is raised by Sushmaji. Either he should support it *...(Interruptions)...* He cannot speak *...(Interruptions)...*

SHRI NILOTPAL BASU: No, what I am saying is *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: See, how can I say you to support it or *...(Interruptions)...* He, as a Member, wanted to intervene *...(Interruptions)...* It has been the *...(Interruptions)...*

SHRI S. S. AHLUWALIA: Sir, there is a rule that a notice *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: I know that *...(Interruptions)...* Notice has been...

SHRI NILOTPAL BASU: Sir, there are umpteen number of precedents in this House when questions of procedures were raised, and, other Members contributed to the debate *...(Interruptions)...*

SHRI S. S. AHLUWALIA: Why is this *...(Interruptions)...* You want a debate on this *...(Interruptions)..,*

SHRI NILOTPAL BASU: I am sorry, Sir, he should go through the rules.

MR. DEPUTY CHAIRMAN: I have called him, let him speak *...(Interruptions)...* Mr. Ahluwalia, I have called him, let us hear what he has to speak *...(Interruptions)...*

SHRI S. S. AHLUWALIA: Sir, my point is that *...(Interruptions)...* Sir, why is he creating new conventions in the House? *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Mr. Ahluwalia, the Chair has called him, what is *...(Interruptions)...*

SHRI NILOTPAL BASU: Sir, through you, I request the House

...(Interruptions)...

MR. DEPUTY CHAIRMAN: Mr. Nilotpal Basu, what is that you want to say about? *...(Interruptions)...* See, there is a notice *...(Interruptions)...* Shrimati Sushma Swaraj has given a notice, and, on that the Chairman has allowed her to make a submission.

SHRI NILOTPAL BASU: Sir, with all humility, I want to point out *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: On this, or, on what *...(Interruptions)...*

SHRI NILOTPAL BASU: Sir, while making the point, we are not aware of what she is going to speak. Now, in her submission, she has raised certain issues. She has raised *...(Interruptions)...*

श्रीमती सुषमा स्वराज : इनका खुद का डिसएप्रूवल का नोटिस है, ये उल्टा कैसे बोल सकते हैं **...(व्यवधान)...**

SHRI NILOTPAL BASU: Sir, she has raised certain questions of procedures *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: No, no. *..(Interruptions)...* The simple question of procedure is why the rules are suspended *(Interruptions)...* That is what she has given.

श्रीमती सुषमा स्वराज : सरकार जवाब देगी , ये कैसे जवाब देंगे, इनका तो डिसएप्रूवल का नोटिस है ।

SHRI S. S. AHLUWALIA: Sir, this is a new precedent being *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: No, No *...(Interruptions)...* Please, take your seat *...(Interruptions)...* Mr. Ahluwalia, please sit down *..(Interruptions)...* Hon. Defence Minister wants to speak, please sit down.

THE MINISTER OF DEFENCE (SHRI PRANAB MUKHERJEE): Mr. Deputy Chairman, Sir, with your permission, I would like to draw the attention of the House that — the hon. Member, Shrimati Sushmaji has pointed out — this is the Bill which originated in the House, and, had been transmitted to this House. Therefore, it will be covered by the relevant 7 sections 122,123 and others. Sir, the normal practice is that two days' notice is required for consideration. The procedure is that as soon as the Bill is passed by the other House, it is transmitted to this House. And, as soon as it is laid on the Table of the House, any Member of the Government, if it is a Government Bill, or any Member of the House, can move the Motion that

the Bill be taken into consideration. The actual date of consideration comes after giving two days' notice. But under Rule 123, the Chairman has been authorised to give direction, and we have sought his permission because of the urgency of the Bill. The hon. Member herself has admitted that this is an Ordinance and the Bill to replace the Ordinance has been placed before this House for its consideration and approval. The reason why we have to do it is that this leg of the Session will be over tomorrow and the Ordinance will lapse after six weeks from the date of commencement of the Session *i.e.* on the 8th April. This Ordinance is related to international commitment and obligation of providing the product patent since 1.1.95, which the country made after signing the Marrakesh Declaration and the WTO Agreement. So many things have been pointed out. I do not dispute them. I most respectfully submit that this suggestion was given by the hon. Leader of the Opposition of the other House, the hon. Leader of the Opposition of this House, the Deputy Leader of the Opposition and many senior Members of the Opposition parties. Yesterday we had discussions on it. They gave two suggestions and those two suggestions were unfortunately not acceptable; that is why we had to resort to this. As far as the gravity of the situation and the implications of this Bill are concerned, nobody is disputing it. But it is not correct to say that the Bill has not been discussed. The Bill is being debated for the last ten years and one Joint Parliamentary Committee even took it up during the second amendment; now, this is the third amendment. I occupied that seat which my friend, Mr. Kamal Nath, is occupying now, and almost from the same place, I tried to introduce the Bill to replace the Ordinance and to give effect to it since 1.1.95. Dr. Najma Heptulla was the Deputy Chairman at that time. We could not get it passed because the House did not agree and, ultimately, the Ordinance had lapsed. The rest is history. Thereafter, we contested our case in the Dispute Settlement Mechanism, not once but twice, and we lost. As a consequence, in 1999, the hon. Members who are sitting in the Opposition now, were in the Government then, they had to bring in a Bill to give it retrospective effect since 1.1.95. That Bill was passed in 1999. Thereafter, the second amendment was passed and now this is the thrid amendment. Therefore, this is not correct to say that the provisions pertaining to the product patent by amending the Patent Act of 1970 are not being discussed widely; it has been discussed very widely. The Parliamentary Standing Committee headed by Mr. Gujaral had discussed the original Bill, the original proposal and a Joint Parliamentary Committee discussed the 2000 Bill. We would have loved to have further opportunity of having it debated and discussed in the Standing Committee but,

unfortunately, because of the situation and circumstances — which will be explained in due course of time, since there are substantive matters — it could not be done. We sought the indulgence of the hon. Chairman of the House and he had agreed to waive the rules and allow the Bill to be debated. As per the procedure, the Statutory Resolution will be moved. Then, the Minister will make his statement while introducing the Bill and, thereafter, as per the procedure, let the proceedings of the House take place on this Bill. This is my most respectful submission.

MR. DEPUTY CHAIRMAN: The Secretariat has received a notice from Shrimati Sushma Swaraj, Member, stating that the Patents (Amendment) Bill which is coming up for consideration and passing in Rajya Sabha has far-reaching consequences and by relaxing the rules of the House, the Bill has been listed for discussion today. In that notice, she has proposed that the discussion on the Bill may be deferred to the second part of the Session so that there can be a meaningful debate on the provisions of the Bill. I have also just now heard the views of Shrimati Sushma Swaraj and the hon. Defence Minister. After carefully considering the matter, I am of the view that the Patents (Amendment) Bill, 2005 seeks to replace the Patents (Amendment) Ordinance, 2004 which is required to be passed by the Rajya Sabha before the Rajya Sabha breaks for the recess. Otherwise, the Patents (Amendment) Ordinance, 2004, issued by the President on 26th December, 2004 would lapse on 8th April, 2005 in terms of Article 123 (2) (a) of the Constitution. I am, therefore, of the view that the Statutory Resolution and the Patents (Amendment) Bill, 2005 should be taken up for discussion today.

डा0 मुरली मनोहर जोशी : उपसभापति जी, मैं आपका बड़ा आभारी हूं कि आपने मुझे इस स्टैच्युटरी मोशन पर अपने विचार रखने के लिए समय दिया। यह स्टैच्युटरी रेज़ोल्यूशन है, जो मेरे साथ – साथ श्री राम जेठमलानी, डा0 अलादी पी0 राजकुमार, श्री राज मोहिन्दर सिंह मजीठा, डा0 (श्रीमती) नजमा ए0 हेफ्तुल्ला और श्री नीलोत्पल बसु, इनके नाम से प्रसारित हुआ है। **...(व्यवधान)...**

SHRI NILOTPAL BASU: I have already withdrawn.

SHRI S. S. AHLUWALIA: No, you can't withdraw *...(Interruptions)...* Sir, he cannot withdraw *...(Interruptions)...*

श्री उपसभापति : श्री अहलुवालिया, कौन से विषय पर बात कर रहे है? **...(व्यवधान)...**

श्री अहलुवालिया, आप बैठिए। **...(व्यवधान)...** आप बोलिए **...(व्यवधान)...**

SHRI S. S. AHLUWALIA: Sir, once it is listed in the 'List of Business',

it becomes the property of the House. You cannot withdraw. You have to take the sense of the House *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Whenever it comes, I will take it *...(Interruptions)...* It is for me to take the sense of the House *...(Interruptions)...* Please *...(Interruptions)...* I will take the sense of the House when it comes *...(Interruptions)..* Please *...(Interruptions)...* Mr. Ahluwalia, we will follow the rules *...(Interruptions)...*

एक माननीय सदस्य : इसको विद्ड्रा करने के लिए सदन की **...(व्यवधान)...**

श्री उपसभापति : आप क्यों प्रीज़्यूम कर रहे हैं कि नही लेंगे । **...(व्यवधान)...** हम लेंगे । **...(व्यवधान)...**

श्री एस.एस. अहलुवालिया : इन्होंने खड़े होकर कहा । **...(व्यवधान)...**

श्री उपसभापति : श्री अहलुवालिया जी, आप **...(व्यवधान)...** आप बैठिए। **...(व्यवधान)...** छोटी बात को **...(व्यवधान)...**

श्री एस.एस. अहलुवालिया : सदन को हाइजैक करने की कोशिश हो रही है । **...(व्यवधान)...**

श्री उपसभापति : श्री अहलुवालिया जी, आप बैठिए । **...(व्यवधान)...** वे कहें तो **...(व्यवधान)...**

श्री एस.एस. अहलुवालिया : स्टैच्युटरी रेज़ोल्यूशन देते है डिसअप्रूवल पर । **...(व्यवधान)...**

श्री उपसभापति : श्री अहलुवालिया जी, आपको कितनी बार टोका जाये **...(व्यवधान)...** यह ठीक नही है । **...(व्यवधान)...** कुछ इश्यू ही नही हैं, आप क्यों बात कर रहे हैं? इश्यू ही नही है । वे कहें तो मैं **...(व्यवधान)...**

It is for me to take the sense of the House on that. You have brought to the notice of the House. Now, it is for me to take the sense of the House *...(Interruptions)...*

श्रीमती सुषमा स्वराज : उन्हें बताना पड़ेगा **...(व्यवधान)...**

डा0 मुरली मनोहर जोशी : श्रीमन, मैं आपका **...(व्यवधान)...** मैं आपका संरक्षण चाहता हूं । मैं एक बहुत महत्वपूर्ण विषय पर **...(व्यवधान)...**

श्री उपसभापति : देखिए, बीच में बात मत कीजिए **...(व्यवधान)...**

Mr. Sharad Joshi, I have not called you.

श्रीमती सुषमा स्वराज : सर, बोलना पड़ेगा कि क्यों विद्ड्रॉ करना चाहते है ।

डा0 मुरली मनोहर जोशी : मैं एक बहुत ही महत्वपूर्ण विषय पर सदन का ध्यान आकृष्ट करना चाहता हूं । सदन के मार्फत देश का भी ध्यान आकृष्ट करना चाहता हूं और इसीलिए मैंने सभापति महोदय से प्रार्थना की थी कि इस विषय पर थोडी गम्भीरता से मुझे तथ्य रखने की अनुमति दी जाए और उन्होंने कृपा करके मुझे अनुमति दी है । श्रीमन यह कहा जा रहा है कि हमने ट्रिप्स के अनुसार बौध्दिक सम्पदा संरक्षण जो हमारी अंतर्राष्ट्रीय नीति है, उसके सदस्य होने के कारण हमें कुछ अंतर्राष्ट्रीय स्तर पर जो हमारी प्रतिबध्दताएं हैं, उनको पूरा करना है । इसमें किसी को कोई आपत्ति नही है । जो ट्रिप्स के अन्दर हमने स्वीकार किया है प्रोडक्ट पेटेंट की बात,उसमें कहीं किसी ने , सदन के किसी व्यक्ति ने, इधर से तो आपत्ति नही की, लेकिन ट्रिप्स के उद्देश्य क्या है, इसको देख लिया जाये । लेकिन ट्रिप्स के उद्देश्य क्या हैं? पहले इसको देख लिया जाए, फिर यह देखा जाए कि यह बिल उसके साथ मेल खाता हैं या नही खाता । ट्रिप्स का जो आर्टिकल एक है, प्रथम, उसमें कहते हैं, …(**व्यवधान**)…

SHRI A. VIJAYARAGHAVAN (Kerala): Sir, I am on a point of order.

MR. DEPUTY CHAIRMAN: What is your point of order?

SHRI A VIJAYARAGHAVAN: Sir, at the introductory stage of the Bill, he can raise the issue in a brief manner ...*(Interruptions)*... That is the rule.

SHRI S. S. AHLUWALIA: You read Rule 123. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: You allow him to make his speech.

डा0 मुरली मनोहर जोशी : श्रीमन मैंने माननीय सभापति महोदय से अनुमति ली है । …(**व्यवधान**)… ट्रिप्स के आट्रिकल एक में कहते है – Members shall give effect to the provisions of this Agreement, फ़िर कहते हैं Members shall be free to determine the appropriate authority for implementing the provisions of this Agreement within their own legal system and practice.

हमारे देश में जो भी कुछ कानून हैं, उसके अनुसार हमें इस ट्रिप्स की संधि को इंपलीमेंट करने की हिदायत है, हम उसके लिए स्वतंत्र हैं । हमारे देश का संविधान, सबसे पहले तो आप इसमें यह देखें , प्रिएंबल में ही कहा है – जस्टिस सोशल, इकानोमिक एण्ड पोलिटिकल, अर्थात इस देश के प्रत्येक व्यक्ति को हमारे संविधान ने सोशल इकोनोमिक पोलितिक्ल जस्टिस दिया हुआ है फिर हमारे सविधान का आर्टिकल 21 यह कहता हैं कि हमें जीवन का अधिकार है । हमारे इसी संविधान में आर्टिकल47 में पब्लिक हेल्थ के बारे में निर्देश है । डायरेक्टिव प्रिंसपल्स में कहा गया है कि सरकार पब्लिक हेल्थ का ध्यान रखेगी the duty of the State to raise the level of

nutrition and the standard of living, and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people, and the improvement of public health, as among its primary duties.

उपसभापति जी, इसलिए कोई भी कानून अगर सरकार बनाती है, सामने लाती है, तो फिर इसमें इस बात का ध्यान रखा जाना चाहिए और ट्रिप्स के आर्टिकल एक में यह हिदायत भी हैं कि हमें अपने संविधान के, अपने कानूनों के मुताबिक इसका इंपलीमेंटेशन करना चाहिए। ट्रिप्स का आर्टिकल हमें कुछ और भी हिदायतें देता है। इसमें ओब्जेटिव्स हैं – आर्टिकल 7 कहता है – The protection and enforcement of Intellectual Property Rights should contribute to the promotion of technological innovation, and to the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge, and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

ट्रिप्स का आर्टिकल 8 कहता है – Members may, in formulating or amending their national laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of the TRIPS Agreement.

Article 70.3 of the TRIPS Agreement says, There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.

महोदय, मेरा निवेदन यह है कि जो जानकारियां हमारे पास हैं, उसके आधार पर इस सारी व्यवस्था का उल्लंघन इसके अंदर बहुत से स्थानों पर किया गया है, जिनका सुधार होना चाहिए। उदाहरण के लिए आप देखें, इस बिल के बारे में डब्ल्यूएचओ ने हमारे मिनिस्टर आफ हेल्थ को चिट्ठी लिखी हैं, वे कहते है – We would like to bring to your attention that several of our members States expressed their concern that in future, generic anti retroviral drugs from India may no longer be available to them. Among other places, these concerns were expressed by the delegations of Ghana, Lesotho, Malawai and Namibia at our Procurement and Supply Management Workshop, Nairobi.

ये सारे के सारे देश निर्धन देश है, गरीब देश हैं। इनके यहां रेट्रोवायराल ड्रग्स मिलती नही है। हमारे देश से ही वहां जाती हैं। इनको यह संदेह है, आशंका है कि उनको ये मिलना बंद हो जाएंगी। इसलिए वे कहते हैं – Ministerial Declaration on the TRIPS Agreement in public health adopted in Doha in 2001 affirmed that TRIPS Agreement

can, and should be interpreted and implemented in a manner, supportive of WTO Members' right to protect public health, and in particular, to promote access to medicines for all. ये बार – बार कहते हैं और अंत में इन्होंने यहां तक लिखा है –

> "As India is the leader in the global supply of affordable antiretroviral drugs and other essential medicines, we hope that the Indian Government will take the necessary steps to continue to account for the needs of these countries."

यह बहुत महत्वपूर्ण बात है, इतने गरीब देशों की हमें चिंता करनी है ।

UNAIDS कि तरफ़ से चिट्ठी आई है-

> "Current legislative proposals intended to take the 1970 Indian Patents Act beyond the commitments agreed in the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) threaten to undermine India's leadership in providing affordable medicines."

इसी तरह से एक और एन0जी0ओ0 हैं, मैं उनकी बात को विस्तार से नही पढ़ना चाहता, ये फ्रांस के एन0जी0ओ0 हैं , जिन्होंने बार – बार यह कहा हैं कि इस देश ने बडी सेवा की है, यहां से सस्ती दवाइयां दुनिया के गरीब देशों को देकर और विशेषकर वे यह कहते है कि एच0आई0वी0 और एड्स के बारे में जो दवाइयां आज विदेशों से आ रही हैं उनको भारत ने सस्ता करके बहुत महत्वपूर्ण योगदान दिया है ।

> "Nowhere is this more visible than in the case of HIV/AIDS treatment. Of the 700,000 people currently receiving antiretroviral treatment in developing countries, an estimated 50% rely on Indian generic production. MSF now treats 25,000 people with antiretrovirals in 27 countries around the world, and roughly 70% of the patients in those programmes use medicines that originate in India. Before genric drugs became widely available in 2001, similar treatments cost over US $10,000 per patient per year-40 times more than the average price of ARV treatment in MSF programmes today."

That is, India's contribution has now been reduced to beyond US $250.

> 'The availability of affordable fixed-dose combination therapy, or three-in-one pills, manufactured in India has revolutionised AIDS treatment in developing countries."

फिर इसी तरह से जो डब्ल्यू0एच0ओ0 के अध्यक्ष है, उनका भाषण है, सबने यह बात कही है **...(व्यवधान)...**

श्री उपसभापति : बहुत लम्बा हो गया है ।

डा0 मुरली मनोहर जोशी : लम्बा नही है, सर, बिल्कुल लम्बा नही हुआ, अभी तो **...(व्यवधान)...** सुनिए, गरीब लोगों की बात सुनिए जरा । **...(व्यवधान)...** कुछ उनकी भी बात सुन लीजिए । **...(व्यवधान)...**

SHRI JIBON ROY: (West Bengal) When you were in power, what did you do for them?

श्री उपसभापति : मिस्टर जीवन राय, प्लीज़, आप बैठिए ।

SHRI JIBON ROY: Now you are in the Opposition, you are more worried about them! It is very strange...*(Interruptions)...*

MR'. DEPUTY CHAIRMAN: Mr. Jibon Roy, please sit down. *...(Interruptions)...* Please sit down. *...(Interruptions)...*

SHRI A. VIJAYARAGHAVAN: Sir, when they were in power, what had he done for them?...*(Interruptions)...*

MR. DEPUTY CHAIRMAN: Mr. Vijayaraghavan, Mr. Jibon Roy, please sit down. *...(Interruptions)...* आप बैठिए ।*...(Interruptions)...* No, no; I am not allowing you.... *(Interruptions).* ..I am on my legs, please. *...(Interruptions)...* आप बैठिए । *...(Interruptions)...* let him finish. *...(Interruptions)...* आप बैठिए, प्लीज़ । **...(व्यवधान)...**

SHRI JIBON ROY: Sir, when he is in the Opposition, he is more concerned about the poor people. But when he was in power, what had you done for them?... *(Interruptions)...*

MR. DEPUTY CHAIRMAN: Mr. Jibon Roy, please sit down. *...(Interruptions)...* Mr. Jibon Roy, when your turn comes, you can speak at the time.... *(Interruptions)...* आप बैठिए । *...(Interruptions)...*

SHRI YASHWANT SINHA: (Jharkhand) Sir, I only request Mr. Jibon Roy, for the sake of his own health, he should not get so agitated. *...(Interruptions)...* I know that once, in this House, he got excited and he had to go to the hospital. *...(Interruptions)...*

SHRI JIBON ROY: I am capable enough to take care of my health.
MR. DEPUTY CHAIRMAN: Mr. Jibon Roy, please sit down. *...(Interruptions)...* मिस्टर जीवन राय, प्लीज़, आप बैठिए । *...(Interruptions)...* Please sit down.

डा0 मुरली मनोहर जोशी : श्रीमन खतरा यही है कि अगर इसी तरह से बीमारी होगी और उसके लिए मल्टी नेशनल कम्पनियों की दवाइयां बहुत कीमत पर आएंगी तो इलाज कराना भी मुश्किल हो जाएगा। **...(व्यवधान)...**

MR. DEPUTY CHAIRMAN: Mr. Narayanasamy, you please help me. ... *(Interruptions).* ..आप interrupt करके और देरी करते हैं।

डा0 मुरली मनोहर जोशी : इंडियन फारमास्युटिकल्स एलायंस कहती है –

> "It has to demonstrate to the world that by bringing a TRIPS complaint regime, not TRIPS plus, it can restore balance between the interests of the innovator and the consumer." "We would also like you to bear in mind that the domestic industry has potential to capture one-third global generic market by 2010. This would translate into six-fold growth in exports from Rs. 15,000 crores to Rs. 90,000 crores."*...(Interruptions)...*

श्री उपसभापति : श्री जोशी जी, एक बजे तक हमें समाप्त करना है, so you please conclude.... *(Interruptions)...*

DR. MURLI MANOHAR JOSHI: Sir, I am not responsible for it. *...(Interruptions)...* Sir, I have got the Report of the Commission on Intellectual Property Rights. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Let the Minister move the Bill and get over it. *...(Interruptions)...*

DR. (SHRIMATI) NAJMA A. HEPTULLA(Rajasthan): I am also to speak on the Resolution. *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI: Sir, the Minister can wait for ten minutes. *...(Interruptions)...*

Sir, I have got the Report of the Commission on Intellectual Property Rights. They also say that, in the scope of patentability, "TRIPS, however, do not define the term invention" and the same invention has not been defined in this Ordinance. *...(Interruptions)...* They say that it is a serious lacuna which will entail very frivolous patents. The reason for frivolous patents has now been recognised even by Americans. I have this book. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: That can be mentioned when we take up the amendments. *...(Interruptions)...* Let the Bill be moved by the Minister. *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI: I am giving certain important reasons why this Bill should be disapproved. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: This is only regarding the Ordinance. *...(Interruptions)...* It should be limited to the Ordinance....*(Interruptions)...*

DR. MURLI MANOHAR JOSHI: Sir, I say this because the Ordinance incorporates certain provisions. *...(Interruptions)...* Once they become laws. .. *(Interruptions)...*

MR. DEPUTY CHAIRMAN: Your Resolution will be put to vote. Then the Bill will be taken up for consideration. *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI: Sir, let me give you the salient reasons why I am opposing the Ordinance at the introduction stage. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: No. The Bill is already introduced. *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI: This is a book published in 2004 by Princeton University and it says—

> "We find ourselves where we are today because the institutional changes of the last two decades have altered the incentives of inventors, firms and the patent companies in ways that encourage legal manoeuvring and discouraging invention *...(Interruptions)...*
>
> The solution is to understand how these perverse incentives work, and to modify patent procedures and policy to restore the incentives for socially desirable behaviour."

...(Interruptions)... .

MR. DEPUTY CHAIRMAN: Dr. Murli Manohar Joshi, the time that the Chairman has given you is *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI: Sir, he has given me 25 minutes. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: No, no. *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI: Yes He told me. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: No. He has not given you 25 minutes. *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI: He told me, Sir.

MR. DEPUTY CHAIRMAN: No. He has not given you 25 minutes. You

1.00 P.M.

please conclude. *...(Interruptions)...* It was agreed that before lunch we would move the Bill. It was agreed. *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI: But, Sir, then the Special Mentions have been take up. What can I do about it? There are others also. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: You please conclude. I have given you sufficient time.... *(Interruptions)...*

DR. MURLI MANOHAR JOSHI: Please give me two or three minutes. *...(Interruptions)...* Please give me two or three minutes. Now, this is a speech by Padma Bhushan Dr. Y.K. Hamied who is well known for his contribution in the field of medicine. *...(Interruptions)...*

THE MINISTER OF COMMERCE AND INDUSTRY (SHRI KAMAL NATH): When was it published?

DR. MURLI MANOHAR JOSHI: This was published in "The Little Magazine" February, 2005. *...(Interruptions)...*

SHRI KAMAL NATH: What is the date? *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI: February, 2005.

श्री विजय जे0 दर्डा (महाराष्ट्र) **:** सर, ये जो **...(व्यवधान)...**

श्री उपसभापति : श्री दर्डा, आप कृपया बैठ जाइए, आपके इंटरवीन करने से हैल्प नही होगी ।

Please conclude. *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI: I am finishing, Sir. *...(Interruptions)...* Allow me to read this. In this speech, Dr. Hamied says—

> "I recall the sentiments expressed by Shrimati Indira Gandhi at a WHO conference in Geneva in 1981:"...

SHRI KAMAL NATH: Are you quoting Shrimati Indira Gandhi?

DR. MURLI MANOHAR JOSHI: ...and he quotes—

> "My idea of a better ordered world is one in which medical discoveries would be free of patents and there would be no profiteering from life or death." Issues of trade or business practice cannot take precedence over the supreme value of human lives. This Ordinance is against the human lives. I request you to disapprove it. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Mr. Minister, you have to move the motion. *...(Interruptions)...*

DR. (SHRIMATI) NAJMA A. HEPTULLA: Sir, I have to say something. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Just a minute. *...(Interruptions)...* Please sit down. Dr. Heptulla, you have laid down the convention. While moving the Statutory Resolution only one Member speaks and other Members can speak after the Minister has spoken. This is the convention which you have laid down. *...(Interruptions)...*

DR. (SHRIMATI) NAJMA A. HEPTULLA: I have not even spoken. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Mr. Minister, move the motion. *...(Interruptions)...*

श्री एस.एस. अहलुवालिया : सर, यह क्या हो रहा है? **...(व्यवधान)...** ये किसको बैठा रहे है? **...(व्यवधान)...**

श्री उपसभापति : आप बोलिए। **...(व्यवधान)...**

श्री एस.एस. अहलुवालिया : ये बैठ जाइये, बैठ जाइये, ऐसा क्यों बोल रहे है? **...(व्यवधान)...**

श्री उपसभापति : आप मोशन मूव कीजिए। **...(व्यवधान)...** आप बैठ जाइये। आप बैठ जाइये। **...(व्यवधान)...** अहलुवालिया जी, **...(व्यवधान)...**

श्री एस.एस. अहलुवालिया : क्या आपके कहने से बैठेंगे? **...(व्यवधान)...**

श्री उपसभापति **:** कौन, कौन ? **...(व्यवधान)...** If anybody has done this, it is wrong...(Interruptions)... आप बोलिए। **...(व्यवधान)...** आप मूव कीजिए। **...(व्यवधान)...** आप मूव कीजिए। **...(व्यवधान)...**Please sit down. Nobody has a right to intervene and tell other Members to sit down. It is the Chair which has to do it. Whoever has done it, it is wrong. Don't do it. *...(Interruptions)...*

श्री रुद्रनारायण पाणि (उडीसा) **:** सर, वे क्यों बैठने के लिए बोल रहे है? **...(व्यवधान)...**

श्री उपसभापति : आप बैठ जाइये। **...(व्यवधान)...** आप बैठ जाइये। **...(व्यवधान)...**

श्री एस.एस. अहलुवालिया : सर, उधर से बैठने के लिए क्यों बोला जा रहा है? **...(व्यवधान)...**

MR. DEPUTY CHAIRMAN: Mr. Minister, you have to move the motion. *...(Interruptions)...* आप बैठ जाइये । **...(व्यवधान)...** आप बैठ जाइये । **...(व्यवधान)...**

श्री एस.एस. अहलुवालिया : सर, एक सीनियर मेम्बर बोल रही हैं । **...(व्यवधान)...**

श्री रुद्रनारायण पाणि : सर, उधर से बोलने नही दे रहे है । **...(व्यवधान)...**

श्री उपसभापति : आप बैठ जाइये । **...(व्यवधान)...** आप बैठ जाइये, आप बैठ जाइये । **...(व्यवधान)...** यह बात ठीक नही है । **...(व्यवधान)...**

श्री रुद्रनारायण पाणि : उपसभापति महोदय, **...(व्यवधान)...**

MR. DEPUTY CHAIRMAN: What is this? *(Interruptions).* Mr. Ahluwalia, this is not good. Kindly control your Member. Kindly control him. This is not good. I do not approve of this. This is not good. Do you approve it?

SHRI S.S. AHLUWALIA: I don't approve it. Sir, you have to disapprove that also.

श्रीमती माया सिंह (मध्य प्रदेश) **:** उपसभापति महोदय, **...(व्यवधान)...**

श्री उपसभापति : आप बैठ जाइये । **...(व्यवधान)...** आप बैठ जाइये । **...(व्यवधान)...** आप बैठ जाइये । **...(व्यवधान)...** श्रीमती माया सिंह जी, आप बैठ जाइये । **...(व्यवधान)...**

प्रो0 रामबख्श सिंह वर्मा (उत्तर प्रदेश) **:** उपसभापति महोदय, उधर से ऐसा कहना गलत है । **...(व्यवधान)...**

MR. DEPUTY CHAIRMAN: Please sit down. आप बैठ जाइये । **...(व्यवधान)...** आप बैठ जाइये । **...(व्यवधान)...**

श्री एस.एस. अहलुवालिया : सर, बैठकर "बैठो, बैठो" बोल रहे है, अगर बोलना है, तो खड़े होकर बोलिए । **...(व्यवधान)...**

MR. DEPUTY CHAIRMAN: What you are doing is also wrong. When the Chair is on his legs, is this the procedure? You are not allowing me to speak. I have said that whoever had done it was wrong. I was looking at this side. I did not see it. I said. "Whoever has done it, that is wrong".

SHRI KAMAL NATH: Sir, I beg to move:-

> "That the Bill further to amend the Patents Act 1970, as passed by Lok Sabha, be taken into consideration."

उपसभापति महोदय, माननीय सदस्य श्रीमती सुषमा स्वराज जी और डा0 मुरली मनोहर जोशी जी की बात एक गंभीर मसले पर सुनने का मौका मिला है । यह जो विषय है, यह एक गंभीर विषय हैं इसमें कोई शक नही है । इसमें हमारी असहमति हो, यह बात भी उचित नही है । सर, माननीय सदस्या सुषमा स्वराज जी ने जो जिक्र किया, हमारे रक्षा मंत्री प्रणब जी ने उसके जवाब में स्पष्ट किया कि क्या आवश्यकताएं थी, पर डा0 मुरली मनोहर जोशी की बात पर कुछ कहने से पहले मैं उसमें एक बात जोड़ना चाहता हूं । उन्होंने तो बड़े संक्षेप में उसका जिक्र किया, पर जिस बिल पर आज चर्चा हो रही है, जो बिल लोक सभा से पारित होकर, आज यहां राज्य सभा के सामने है, यह बिल कोई पिछले हफ्ते या महीने भर पहले या दो महीने पहले, सबके सामने नही आया है । जो प्रोसेस हम चला रहे है, प्रणब जी ने कहा कि जब पहला अमेंडमेंट आया था, तो पूरे हाउस में चर्चा हुई । दूसरा अमेंडमेंट आया, तो जे0पी0सी0 बनी । जे0पी0सी0 दो साल चली और जो सुषमा जी और डा0 मुरली मनोहर जोशी ने बात रखी, मैं उसमें जोड़ना चाहता हूं, और वे मेरा और सदन का ध्यान आकर्षित कर रहे थे, उन मुददो पर उपसभापति महोद्य वे सब मुददे जो ये पढ रहे थे ये चिति पढ़ रहे थे ये प्रस्ताव पढ़ रहे थे – इससे हमारी असहमति नही है । मुझे तो खुशी होती कि आपने जो यह बात पढ़ी है, हमें जो सुझाव दिए गए अन्य संस्थाओं के – अपने देश की संस्थाओं के और अंतर्राष्ट्रीय संस्थाओं के – कि ट्रिप्स की सीमा में क्या आता है, अगर आप उसी गंभीरता से देखते कि जो लोक सभा ने बिल पारित किया है, एक – एक बात उसमें शामिल है ।

सर, जे0पी0सी0 ने दो साल लगाए और 40 बैठकों की और सुषमा स्वराज जी कहती हैं कि 8 दिन में हम सबकी बात सुन लेंगे । जे0पी0सी0 ने दो साल और 40 सिटिंग्ज़ की है । सर, क्योंकि उन्होंने कुछ बात कही थी कि हमसे चूक हुई है । कौन सी चूक? नवंबर में मैंने आडवाणी जी को पत्र लिखा और आडवाणी जी से निवेदन किया कि हम इस पर चर्चा करें । उनका, बी0जे0पी0 का एक प्रतिनिधिमंडल मुझसे मिला । यह बिल दिसम्बर, 2003 में आया था, पब्लिक डोमेन में यह बिल 2003 से हैं, फिर भी मई के आखिर में जब हमारी सरकार आई, मुझे खुद समझनी थी बातें । मुरली मनोहर जी सही कहते है, गंभीर मसला है, तो बिना समझे मैं जून – जुलाई में इसे नही लाना चाहता था । मैं खुद इसे समझाना चाहता था, चर्चा करना चाहता था । सबसे बातचीत करके, विभिन्न संस्थाओं से बातचीत करके, मैं तभी इस बिल को आगे बढ़ाना चाहता था और मैंने देखा कि इसमें सारी चर्चाए पडी है मान्नीय सदस्य अरुन अटाली जी वेजो बिल पेश किया था इन्होएन हुतों से चर्चा की थी । इन्होंने बहुत सारी संस्थाओं से चर्चा की थी, तो जब मैंने आडवाणी जी को पत्र लिखा और उनका प्रतिनिधिमंडल मुझसे मिला, तो मैंने उनसे पूछा कि आप कौन सा सुझाव देना चाहते है? हर दल को मैंने पत्र लिखा, वामपंथ को, लेफ्ट के सदस्यों को भी पत्र लिखा । इन्होंने लिखित में मुझे कुछ सुझाव दिए । आप जानते है, मैं जानता हूं कि हमारे जो लेफ्ट के सदस्य है, इनके क्या विचार है । आपका प्रतिनिधिमंडल मिला, उसी बिल पर, जो बिल आप दिसम्बर, 2003 में लाए थे । फिर भी मैंने उचित समझा, आवश्यकता नही थी, क्योंकि यह तो आपका ही बिल था, पर मैंने उचित समझा कि फिर भी मैं आपको पत्र लिखूं और पत्र लिखा, आपके ...(**व्यवधान**)...

MR. DEPUTY CHAIRMAN: The Minister is not yielding.

श्री कमल नाथ : आपके प्रतिनिधिमंडल से मेरी बातचीत हुई । कुछ सुझाव आए, हमारी वामपंथी पार्टियों ने भी मुझे कुछ सुझाव दिए, और भी कुछ सुझाव आए, तो यह कहना कि बडी जल्दी में मैं बुलडोज़ कर रहा हूं, हम बुलडोज़ करने का प्रयास कर रहे है, इसकी कोई आवश्यकता नही है । पिछले हफ्ते मैंने आडवाणी जी को फोन किया और मुझे खुशी है, मैं उनको धन्यवाद देता हूं कि उन्होंने फौरन मुझे बुलाया । और कई सदस्यों के साथ मुझसे मीटिंग की । उन्होंने सुझाव दिया कि यह स्टेडिंग कमेटी में भेज दिया जाए । मैंने उनसे कहा कि क्या हमारी मजबूरी है, क्या हमारी अंतर्राष्ट्रीय मजबूरी हैं और हम क्यों यह आर्डिनेंस लाए और क्यों हमें आज इसको लोकसभा और राज्यसभा में पास करने की आवश्यकता है? उनका सुझाव स्टेंडिंग कमेटी का था । मैंने अपने साथियों और साथी दलों के साथ चर्चा की, तब यह बात प्रेक्टिकल लगी कि जब दो साल, जे0पी0सी0 में चर्चा की, क्या सुझाव था, कि इस आर्डिनेंस को लेप्स होने दें, पांच दिन से लेकर आठ दिन तक के समय में, सब थे । जो चिंताएं और सुझाव हैं, हम उनको आठ दिन में समाप्त करेंगे । मुझे केवल औपचारिकता पूरी नही करनी थी, मुझे अपने बिल पर विश्वास था । इस बहस में मेरा प्रयास रहेगा कि जो आपकी शक – शंकाएं है, मैं बड़े आदर के साथ उनको दूर करने का प्रयास करूंगा । क्योंकि इस बिल से हमारे बहुत बड़े उधोग क्षेत्र, फार्मास्यूटीकल इंडस्ट्री का भविष्य जुड़ा हुआ है । हमारे गरीब लोगों का भविष्य जुड़ा हुआ है, हमारे हैल्थ केयर का भविष्य जुड़ा हुआ है । मैं आपको यह विश्वास दिलाना चाहता हूं कि जो हमारी सरकार है, हमारा गठबंधन है, वह कोई कम चिंतित नही है । हम बडी जिम्मेदारी के साथ यह बिल लाए है । हमारे वामपंथी सदस्यों ने जो सुझाव दिए और जो हमने संशोधन किया है, वह सबसे पूछकर किया है । मैं अभी कुछ नही कहना चाहता हूं । जो इसके और अंग और मुद्दे है, जब मैं बहस का जवाब दूंगा, मैं उस समय एक – एक बात का जवाब देने का प्रयास करूंगा । जो आपकी शक – शंकाएं हैं, वे आपके बिल में भी सही थी । मैं आपके बिल की आलोचना नही करना चाह रहा हूं । आपके बिल में भी, जो चिंताएं और शक – शंकाएं थी, उनको नजर – अंदाज नही किया यह बात सही है । उसमें हमने भी कुछ जोड़ा है और हमारे पास भी कुछ सुझाव आए है । मेरा यह प्रयास रहेगा कि इस बहस में जो भी आपकी शक – शंकाएं रहेगी, मैं एक – एक मुद्दे पर, एक – एक अंग पर, आपको सैटिसफाइ करने का प्रयास करूंगा ।

The questions were proposed.

MR. DEPUTY CHAIRMAN. The House is adjourned for one hour.

The House then adjourned for lunch at thirteen minutes past one of the clock.

The House reassembled after lunch at sixteen minutes past two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

MR. DEPUTY CHAIRMAN: Shri Yashwant Sinhaji.

SHRI YASHWANT SINHA: Mr. Deputy Chairman, Sir, *...(Interruptions)...*

SHRI ARUN JAITLEY (Gujarat): We do not have a Cabinet Minister here . *(Interruptions)..*

श्रीमती सुषमा स्वराज : सर, कैबिनेट मिनिस्टर ही नही है, पार्लियामेंटरी अफेयर्स मिनिस्टर भी नही है, कैबिनेट मिनिस्टर भी नही है, ऐसे कैंसे चर्चा शुरू होगी **...(व्यवधान)...**

MR. DEPUTY CHAIRMAN. Mr. Narayanasamy, see to it that a Cabinet Minister is here *(Interruptions)..* You should take care of all these things. *...(Interruptions)...*

श्रीमती सुषमा स्वराज: यशवंत जी, बैठिए आप, हमारी तरफ से कोई चर्चा शुरू नही करेगा । न पार्लियामेंटरी अफेयर्स मिनिस्टर है, न संबंधित मंत्री है, न कोई कैबिनेट मिनिस्टर हैं **...(व्यवधान)...**

डा0 मुरली मनोहर जोशी : इसी से जाहिर होता है कि ये कितने सीरियस हैं इसके लिए **...(व्यवधान)...**

श्रीमती सुषमा स्वराज : उपसभापति जी, आप 10 मिनट के लिए हाऊस ऐडजॉर्न करिए ।

श्री एस.एस. अहलुवालिया : आप 10 मिनट के लिए हाऊस ऐडजॉर्न करिए ।

DR. MURLI MANOHAR JOSHI: They are not serious about this Bill. *...(Interruptions)...* They just want to bulldoze. *...(Interruptions)...*

SHRI S.S. AHLUWALIA. Please adjourn the House.

श्रीमती सुषमा स्वराज : चर्चा कैसे शुरू होगी ? सर? चर्चा शुरू नही हो सकती, कोई नही बोलेगा **...(व्यवधान)...**

MR. DEPUTY CHAIRMAN: A Cabinet Minister should be here, I agree. *...(Interruptions)...*

R. S.S. AHLUWALIA: This is not the way. *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI: This shows their casual attitude towards this Bill....*(Interruptions)...* Is this your concern for the farmers and health care of this country?

श्रीमती सुषमा स्वराज **:** मैंने सुबह कहा था कि ये अफरा – तफरी में बिल ला रहे है, अब आप हालत देख लीजिए कि यहां संसदीय कार्य मंत्री नही है, संबंधित मंत्री नही है, कोई कैबिनेट मंत्री नही है **...(व्यवधान)...**

MR. DEPUTY CHAIRMAN: The concerned Minister has taken permission to go. *..(Interruptions)...* But some other Cabinet Minister should be present here. *...(Interruptions)...* The Minister of State is there. *...(Interruptions)...*

श्रीमती सुषमा स्वराज : पार्लियामेंट अफेयर्स मिनिस्टर ने उस समय कहा था कि अगर कमलनाथ जी नही होंगे, तो उनके भी वरिष्ठ मंत्री, पूर्व कॉमर्स मिनिस्टर और आज के रक्षा मंत्री यहां होंगे, यह कहा था, आपके सामने कहा था, लेकिन यहां कोई नही हैं । आप हाऊस एंडजॉर्न करिए 10 मिनट के लिए, 15 मिनट के लिए, उनको आने दीजिए, तब हम दोबारा बैठेंगे ।

MR. DEPUTY CHAIRMAN: The House is adjourned for ten minutes.

The House then adjourned at eighteen minutes past two of the clock.

The House re-assembled at twenty-eight minutes past two of the clock,

[MR. DEPUTY CHAIRMAN in the Chair]

THE MINISTER OF DEFENCE (SHRI PRANAB MUKHERJEE): Mr. Deputy Chairman, Sir, with your permission, I would like to tender my apology, through you, to the House that because of my absence the House had to adjourn for a short time *i.e.,* ten minutes. I sincerely regret it and would like to assure you that it would not happen in future.

SHRI YASHWANT SINHA: Mr. Deputy Chairman, Sir, I must confess in the beginning itself that it is with a degree of reluctance that I rise in this House to oppose the Patents (Amendemnt) Bill, 2005.1 am not participating in this debate with any great sense of enthusiasm because, after all, this is a Bill which has been brought to this House for meeting an international obligation. I don't think there is any difference of opinion in this House or outside Parliament that we should do whatever we are required to do, in order to meet our international obligations, on the due date or with effect from the due date. But, Sir, the debate earlier in this House, on this issue, and outside, and, perhaps, in the other House, has obfuscated the real issue. It appears strange to people why should we—now that we are on this side of the House—be opposing a draft Bill which we ourselves had introduced in Parliament in December, 2003. Quite clearly, a number of people who can serve a political purpose by highlighting this point are giving it the kind of emphasis which it does not deserve.

Earlier in the day, Sushmaji and Dr. Joshi, have put forth some of the reservations that we have with regard to the course of action which has been adopted by the Government with regard to this Bill. I quite frankly feel, as a Member of this House, that somewhere my rights have been

trampled upon. I am saying this with a full sense fo responsibility. The Bill, as passed by the other House, was circulated to us this morning around 8.30 am or 9 o' clock. I got in touch with the Secretariat last night and enquired from them as to when or by what time should we submit our amendments and I was told that our amendments must reach by 10 o' clock in the morning. We got the Bill, as passed by the other House, at 9 o'clock. We are required to sit, within one hour formulate our views with regard to the amendments, and then file amendments by 10 o' clock. I must confess before you that I looked at the official amendments, which had been brought by the Government in the other House, and I tried to formulate some of the amendments that I wanted to bring before this House for its consideration. On the basis of these amendments—I had not seen the final copy of the Bill as passed by the other House which became available only this morning— I formulated my amendments. It is a very important Bill. And, because it is a very important Bill it is more the reason why we should give the fullest and the most thoughtful consideration to this Bill. Sir, this is one Bill which should not be rushed through Parliament. The other House had some opportunity. We have not had even that limited opportunity in this House. Therefore, somewhere I feel diminished, as a Member of Parliament belonging to the Rajya Sabha, that we should be dealt with in this manner because, on the very face of it, we needed some time. If there was one Bill where todays' notice was absolutely necessary, it was this Bill.

And, as Sushmaji had pointed out, every Bill has notes on Clauses. Now, significant and varied amendments have been introduced by the Government in the draft Bill which was introduced in the Lok Sabha. There are no notes on the Clauses of the Bill which has been circulated because there was no time, perhaps, to prepare the notes on Clauses. So, we do not have the explanation in the Bill itself as to why those amendments have been brought about.

We were only trying to evolve a consensus within Parliament which will ultimately reflect the consensus not only nationally but also internationally. Because, when Dr. Joshi was speaking on the Statutory Resolution disapproving the Ordinance, he pointed out, in this House, the number of reservations which have been expressed by very many reputed, responsible international organisations about the provisions of the Patent Bill which we had introduced in Parliament in December, 2003 and, which this Government had, then, brought forth in the form of an Ordinance. So, it is not merely concerns domestically that we have taken into account.

Because of the position that India has come to acquire; because of the clout that we have come to acquire; because of the influence that we have come to acquire, that the whole world is today concerned. The whole world is today looking keenly at what kind of a Patent Bill is the Parliament of India going to pass. And, I believe, there are already reports that a great deal of concern has been expressed, is being expressed that the Bill has got through the other House and, today, it will go through this House also, and that those concerns will remain unaddressed. I mentioned to you, Sir, in the beginning that in all our efforts, in all our discussions with the Government we were merely trying to emphasise the fact that we should build a broader consensus on the provisions of this Bill. And, that we should have an open mind, and with that open mind we should incorporate the changes which appear to us to be necessary to subserve our national interest and the international interest of the poor of the world, the needy of the world. But, unfortunately, it seems to me that we are giving ago by to that opportunity for reasons which do not appear to be valid to us. Sushmaji has mentioned the various suggestions that we had made in the two meetings which we had with the representatives of the Government. And, we did not, for a moment, say that we were opposed to the Bill; we did not, for a moment, say that we would not let this Bill be passed. All that we were trying to do was to ensure that the Bill, which we pass in the Parliament, was backed by a national consensus. I am afraid, there is a fractured opinion with regard to the Bill even today, even after the amendments which have been brought forward by the Government, and passed by the other House. Even today! Otherwise, Sir, I wouldn't need to move the nine amendments that I have moved in this House with regard to even the amended Bill which has come to us. So, I am sad that we have failed to build that consensus in this Parliament, which was so much within our grasp. It was not an impossible consensus to achieve. It was there, waiting for us to grasp it. But I must say with deep regret that the Government has let that opportunity pass; that the Government did not give due consideration to the various suggestions that we had made with regard to the evolution of that consensus.

Sir, when we introduced this Bill in December, 2003—my colleague, Shri Arun Jaitley, is sitting here—and it was referred to the Standing Committee—in fact, it was a Rajya Sabha notification which referred the Bill to the Standing Committee—were we the last word on wisdom, knowledge, or the validity of the approach to the whole issue? I will say, 'No'. And, that is the reason why we decided that it should go to the

Standing Committee, where there will be a nation-wide comprehensive debate on this—we had a time of twelve months—and, then, will not only be able to meet the deadline, but will be able to meet that deadline on the[1] basis of national and international consensus. I am saying this with great humility and with great respect, can this Government, the repository of all the wisdom, say that whatever it produces is the last word? Obviously not. They have admitted that it is not, because two sets of amendments were moved in the other House. The first was moved on 21st March and the second was moved on 22nd March. So, obviously, the Government had an open mind. But that open mind had a Left orientation. Unfortunately, it was only the Left Parties which were taken into confidence and the merits of the Bill were discussed with them. I have not only seen the newspaper reports, but I have seen TV. bytes and from that I can conclude; 1 can surmise that the Government thought it fit to accept some of the suggestions and amendments which were suggested by the Left Parties. And we were told that there were a dozen amendments, out of which they accepted seven to begin with. Then they accepted another three. So, ten were accepted and two were not accepted. Ultimately, our friends in the Left Parties decided to fall in line. Even in this House we heard from Mr. Nilotpal Basu saying that he was withdrawing his name from that list of Members disapproving the Ordinance. So, they have fallen in line. I am not privy to the discussions that had taken place. I am not privy to the suggestions .which have been made by the Left Parties to the Government. I am not privy to what has been left out of the suggestions which have been made by them, or whether there were, indeed, only a dozen amendments that they suggested or there were more, or is it only that two amendments have not been accepted or is it that those two amendments are inconsequential. Sir, from a very cursory reading of the Bill, — I am not a great Legal expert—I find that at many places, the follow up amendment, the consequential amendment, has been missed. You amend one part and, then, you have to follow up and amend the related parts. Even that, at times, I find has not happened. But I still feel that there are certain areas of concern in this Bill, which need to be addressed.

I would say, agreeing with my colleagues, that perhaps, Sir, it is not yet too late. Let us not stand on a false sense of prestige in this matter. Perhaps, it is not too late even now for the Government to reconsider its position and agree to refer the Bill to the Standing Committee. My international experience, Sir, will suggest that heavens are not going to fall if the Bill is referred to the Standing Committee that would build a national

consensus behind this Bill and that would take into account the concern of other developing countries, of organizations like the WHO, the international NGOs and, finally, pass the Bill. Sir, my colleague, Dr. Joshi, was referring to the various articles of the TRIPs Agreement. It is nobody's case that the Bill is collapsing. No; the Bill is very much in Parliament's domain. It is very much under Parliament's consideration. Only the Ordinance will cease to exist. And when we reassemble, Sir, it will be possible for us to consider a Bill where the wisdom of Parliament would have gone in, where we would have the benefit of not only of their advice, but the advice of various other interest groups.

I heard Shri Pranab Mukherjee saying that the Bill was under consideration of the Joint Parliamentary Committee for two years from 2000-02. It was indeed there, but this is the first time that we are dealing with product patent. This Bill is concerned with product patent. We are making a paradigm shift in this country from process patent to product patent, and even in that process patent regime, the 1970 Act has done a tremendous service. If India, today, is recognised a leader in pharmaceuticals the world over, it is entirely because of the provisions of the Patent Act of 1970. If those provisions and those flexibilities had not been available to us, then, we would be like some of the other developing countries. Our people would have suffered because of the high cost of medicines and we would not be able to develop research facilities in the manner in which we have done in this country over those years. Now, I also believe, Sir, that the hon. Commerce Minister has assured the other House — because this, again, is in public domain that he will set up an Expert Committee to look at some of the provisions which he has not been able to accommodate. For example, micro-organisms, do we include that in patentability or not? The WTO has not carried out its mandated review. What is the hurry to include that? Why not take a clear stand? There was a suggestion made, when we were discussing with the leaders of the Government yesterday that we could pass the Bill, and all our amendments could then be taken into consideration subsequently. So, do we adopt that very peculiar practice of passing a Bill and referring the amendments to the Standing Committee? That the Standing Committee will not deal with the Bill; they will deal with the amendments which come to this House. Therefore, I will, once again,...

SHRI PRANAB MUKHERJEE: Sir, if you yield for a second, I would like to clarify that, perhaps, yesterday, I could not clarify the position. What I suggest to you is that at this late stage, the amendments can not be

accepted, but if you formulate your amendments in the course of debate, then, next time, the Government will amend the Bill with those amendments, and that could be considered by the Standing Committee. It is not that only the amendments will be referred to the Standing Committee. I clarified that position yesterday. If I could not communicate it yesterday, I am communicating it now.

SHRI YASHWANT SINHA: I understand Pranabbabu. It was only a turn of phrase that I know that no amendments alone can be referred to a Standing Committee without the original Bill, but the original Bill stands passed, then, what will be left for consideration? Only the amendments. And it will be our amendments. It will not be the amendments of the pharmaceutical industry.

SHRI PRANAB MUKHERJEE: When the whole Bill goes, then, all the clauses of the Bill, all the sections of the Bill, alongwith the new amendments, can be considered by the Standing Committee. The Standing Committee has that mandate.

SHRI YASHWANT SINHA: Sir, the very brief point, with due respect, that I am making is, there is still time to evolve a consensus on this, it will be a very unfortunate signal, Sir, that will go out of this House—it has already gone out of the other House—today, that the polity is divided on the Patent Bill. There is no reason for the polity to be divided on the Patent (Amendments) Bill. It is possible for us to reach a consensus. This is a point that i am repeatedly emphasising, because it appears to me that we are missing a golden opportunity to establish that consensus. I am not making a partisan point. Shri Kamal Nath was saying that he has, more or less, produced the Bill which my colleague, Shri Arun Jaitley, as Commerce Minister had presented, but they incubated it for nine months, and, then, through the Ordinance, it was more or less the same Bill. So, questions will arise. We could have, perhaps, in those 8-9.months given the Standing Committee an opportunity to deal with the Bill. We missed that opportunity. By all means, I am not saying that this Government should have adopted without consideration the draft Bill which was already before Parliament in the earlier Lok Sabha. But the point I am making is that this decision could have been arrived at in good enough time for the Standing Committee to deal with the various provisions of this Bill. Because the fact that it was with the Standing Committee was also well-known, and the occasion for the Government rushing with an Ordinance should not have arisen. This is the brief point that I would like to make. Now, Sir, what are the concerns

on merits that we have even today, even after those ten amendments or whatever have been adopted. My first concern, Sir, is with regard to patentability. What will be patented? What will be outside the domain of patents. Now, despite the fact that it was a process patent that we were dealing with, the Act of 1970 has dealt with this in great detail and clearly said what will not be patented. When you are dealing with product patent, we have to be even more careful about what will not be patented. Also, Sir, I am saying this for practical purposes. I have the information; for instance, there are over 300,000 applications for patents, which are supposed to be pending in the United States. But then, they have 3000 examiners to deal with that. We have a Mailbox where we have had over 8000 applications. More applications would flow in once we adopt this product patent approach. How many people do we have in our Patents Office to deal with these? The total number of posts is 215.1 will be happy to be informed by the hon. Minister as to how many of them are filled up at this point of time. I must say that while we are a leading country and we have great expertise in the international patent regime, still, it is not enough. This is not enough to be able to deal with all the workload, which will arise once we go in for product patent.

Now, is the Government prepared to be able to deal with it? What are the plans that the Government has to deal with the flood of applications, which it will be confronted with, with the 215, out of which only a certain number of posts are filled up? Are we equipped to deal with it? Do we have trained manpower in the IPRs to be able to take positions even when we create them? Even otherwise, on its own merit, patentability is something, which is of crucial importance.

The definition of patentability, I agree with you, has been amended in the other House. But there are other issues and when I come to some of the amendments, if you give me an opportunity to speak on them, I will be explaining to you why I have moved the amendments that I have moved with regard to patentability. These are very important considerations and we cannot overlook them. We should not give them a go-by are a short shift. So, Sir, patentability is a very important issue.

Then, there is the issue of compulsory licence. There are issues of exports from India. Here again, some of the infirmities of the earlier Bill have been sought to be dealt with in the amendments, which have been moved officially in the other House and incorporated in the Bill that has come before us. But, Sir, does it take care of all our concerns with regard

to compulsory licence? We had stringent provisions of compulsory licence under the original Patent Act of 1970. Now that we are going to product patent, we need to be even more careful. I am making this point because while the legislation in India has to be TRIPS-compliant it need not be TRIPS-plus'. We should use all the flexibilities and all the room that we have within the TRIPS Agreement, within the Doha Declaration, and within the overall understanding of this law. We have to use the entire room that we have to manoeuvre to our advantage and to the advantage of the developing countries globally.

Now, on compulsory licence and exports, Sir, I still believe that our provisions are weak, that we need to strengthen them in order to give advantage to our companies which already enjoy that advantage and ensure that that advantage is not lost. Again, Sir, I would say that I would be mentioning these specific details and the reasons when I speak on the amendments.

Now, a very important issue is pre-grant opposition. We had, again, stringent provisions for pre-grant opposition in the 1970 Act. Here again, the Government has brought in official amendments and some of the weaknesses have been removed. For instance, in the earlier Bill, it was only the person opposing the grant of patent only had the right to file an objection and he would not be heard. Now, it has been agreed that he will be heard. Then, the Patenting Authority will take a decision in the matter. But why is the provision of appeal not there? This is something which I have not been able to understand that he will be able to *raise* objection at the pre-grant stage. He will be, now according to the latest amendment, heard, but if the decision, goes against him he will not be able to appeal against that Sub-section (4) of Section 25 has been excluded in the new amended Bill, which is before us. Now, I am unable to understand the logic behind it. We must have very strong pre-grant opposition provisions and nothing should be done to dilute this because ultimately this is going to stand us in good stead If there is any weakness in this area, then we are going to be loser, and I will hasten to add that there is absolutely no TRIPS requirement. TRIPS does not lay down that pre-grant opposition should be modified and should be dealt with in any manner. It is not called for. So, why not let the provisions of the earlier statute stand with regard to pre-grant opposition?

Now, the other provision which has not been made in the revised Bill, Sir, is with regard to the mail-box. I would like to share this information

3.30 P.M.

with the House. Sir.in the mail-box, there are a total of 8,926 patent applications. Majority of them, that is 7,520 belong to foreign entities and only 1,406 are Indian applications. I am.quoting this figure to emphasise the kind of interest that the multi-national corporations have in India's market and the unbridled desire on their part to be able to take advantage of this huge market at whatever cost. So, Sir, there are two issue here. One is, how are we going to deal with this? We had earlier under our TRIPS obligations granted exclusive marketing rights to some companies. We know from experience now that instead of going into who granted it, why did we grant it, we can go back to 1994 and say why did we enter into this agreement at all. That is not the issue today. The agreement is there. We have to be WTO and TRIPS compliant. But the point I am making is that we cannot throw our people at the mercy of the multi-national corporations. We have to protect them, especially in the pharmaceutical field because we know what is happening in other countries where they are at such' mercy. The other issue in the mail-box is, whatever has come into the pulic domain between 1995, when the mail box was started, and 2005 or at the end of 2004, whatever is in the mail-box but is in public domain, do we still grant patents? Our firms have worked hard to bring those pharmaceutical products into the public domain. There is a provision, I have moved amendments on that, which says that a reasonable royalty will become payable by Indian companies which are already manufacturing those pharmaceutical products, generic drugs in the public domain. Now, this appears to be extremely contradictory to me that those who have helped it bring in public domain, should be penalised by asking them to pay royalty at reasonable rate. I have an amendment on that also. The point I made that it is not a TRIPS requirement. Now, there are other countries. Out of this 7520 applications, U.S. based entities have 2324 applications, out of which 2096 are pharma-related filings. Thirteen hundred out of our 1406 are in the pharma sector. Among other countries, Germany has 1238 filings, out of which 1134 are pharma related and then, it is followed by the U.K., Switzerland, Japan, Sweden, France, Denmark, Belgium, etc. Therefore, we have to deal carefully with the mail-box and let us not leave anything to chance. This is not an opportunity which will come our way easily in future, and especially, in the light of the very wide support of international public opinion that has been generated for India. Sir, we are debating this issue. If the Government is determined, --they have a majority in this House also; they have the support of the Left parties — they will pass this Bill. My amendments will be negated. The Bill will

be passed and that will be the end of the matter for the present. But what will be the consequences? Let us forget it divides the polity today. Let us forget that it is being passed despite the objection of a sizeable opposition. What is going to happen is that India — and I am saying it with great regret but with a great sense of responsibility — will become the laughing stock of the international community. Because our friend in Africa, our friends in Latin America, our friends in other Asain countries, who look up to us, they will be absolutely unable to understand why we have done what we have done and why we have shot ourselves at the foot in this matter. This is something which they will not understand.

Now, Sir, I have one point, which has been made, that this is not going to affect the prices of medicines in India. The representatives of the Government have gone on record on various forums to say that something like 97 per cent of the generic drugs in India are outside the patent regime; they are in the public domain, and therefore, their prices will remain unaffected. I think, with due respect, this is not a correct understanding of the position. I have here a list of various pharmaceutical products - drugs and medicines - which will show what their prices in India are, what their prices in Pakistan are, what their prices in Indonesia are, what their prices in the U.K. are, and what their prices in the U.S.A. are. And, I don't know, these are all tongue-twisters, but I will try to name a few. Norfloxacin, price in India - Rs. 20.70; price in Pakistan - Rs. 168.71; price in Indonesia Rs. 130 63; price in the U.K. - Rs. 304.78; price in the U.S.A. Rs. 1843.66. From Rs. 20, Sir, or you round it off to Rs. 21 to Rs. 1844. This is the difference in the prices between the U.S. and India. Now, they can, perhaps, afford it because they are rich people. But what is going to happen to the poor people, the' 'आम आदमी' in India, and, it will be a grievous error on our part if we were to imagine that the new drugs, new patents, will be available to us at the same prices at which they were available earlier.

Sir, as far as HIV and AIDS are concerned, this is 4 where — despite the fact that we are still working on the vaccine with our antiretroviral drugs --- we are one of the leaders, and there is absolutely no comparison like there is no comparison here between the prices of the drugs that we produce here and supply to the other countries, and, the prices of the drugs which they will get from some of the developed countries. Now, what is going to happen? Will anyone on behalf of the Government assure us, assure this House that the prices will remain steady, that for the next 3,4, or, 5 years, the prices are not going to fall, and, that the poor in this country will not suffer. I don't think it will be possible for any responsible

person to make that kind of a statement.

So, ultimately, Sir, what do we come back to? Ultimately, I will make this very simple but very important point that the Bill, as presented to this House even after the amendments in the other House, which have satisfied our friends in the Left Parties, is not satisfactory to us. We still have, the people outside this Parliament still have, the international community has major concerns, and the poor people in Africa, Latin Amercia, and, Asia still have major concerns. Therefore, Sir, it will be perhaps entirely out of order to push this Bill through in its present form in this manner.

Now, I come to the last point. My last point is the point that I made in the beginning. Are heavens going to fall if the Bill is referred to the Standing Committee? What is the Standing Committee? The Standing Committee is a forum where we try and build a national consensus, where we can give — I will borrow the term from our leader "सुनवाई" to a large number of interests in the pharmaceutical sector, in the biotechnological sector, in the chemical sector, in the agricultural sector, and, the NGOs; they will come and present their case before the Standing Committee, and, it will help us, on the basis of an all-party consensus, to evolve a national consensus, a consensus which will then satisfy our friends outside India also.

Sir, why will the heavens not fall? Because , Sir, according to my information, even a country like UK is not rushing through the amendment of its Patent Bill. I did not want to take the time of the House with regard to what various British Parliamentary Committees and other experts have said with regard to patentability, and, what precautions should specially the developing countries take, but I would say that there is a need for a threadbare discussion. This discussion in the House will not be a threadbare discussion. It will only be a formaility that we will go through, and, therefore, I will urge upon the Government—I am glad, *Pranab babu* is here — that this is one area where we need not play petty political games with each other. Let us not score debating points against each other. This is a matter of national concern. I was asked by a press person yesterday, "Is the NDA out-manoeuvred because the Left has decided to support?" Everybody needs to be in-manoeuvred; actually, that is what the approach should be. Why should anybody be out-manoeuvred?

Why should this kind of impression go? Why should I stand here, Sir, and say that I am not in favour of this Bill? I will be happy supporting this Bill provided these concerns are taken care of; that the Standing Committe

discusses it threadbare; that the Parliament discusses it threadbare; and then a Bill is passed which will, Sir, and it is very important for us to remember, "which will add to the great glory of this country as the Patent Bill of 1970 did". The Patent Bill of 1970, Sir, was appreciated the world over. We were not in office; it was not my Bill for which I am saying was a great Bill. I know that they were working on this Bill from 1950s. It took us many long years but, ultimately , the final product was something which the whole world appreciated. Let us produce a 'final product', once again, which the whole world will appreciate. Thank you, Sir.

SHRI JAIRAM RAMESH (Andhra Pradesh); Thank you, Mr. Deputy Chairman, Sir. Just before the lunch-break, I was beginning to wonder whether it is my parliamentary karma to follow Dr. Murli Manohar Joshi. But once lunch was declared, I ran into the former finance Minister, Mr. Yashwant Sinha, outside who reassured me that he was going to open the debate from the opposition ranks. He used a very colourful expression to explain his predicament. He put his arms around me and said, "जयराम मैं बलि का बकरा बन रहा हूं ।" And he performed this" "बलि का बकरा' very admirably. He tried to adopt a high moral posture on trying to build a national consensus.... *(Interruptions)...*

SHRI RAVI SHANKAR PRASAD (Bihar): I want to tell you for your information that what is talked outside is not used inside. That is what my guru... *(Interruptions)...*

SHRI JAIRAM RAMESH: It was on the edge of this door... *(Interruptions)* Sir, he performed the role very admirably by adopting a very high moral posture on the need for a national consensus on critical national issues. Coming from the spokesman of a party that has broken a national consensus on VAT just four days ago, this call for a national consensus is sounded very hollow. I do not want to give the numerous instances where the word 'national consensus' did not exist in the vocabulary of the NDA when it was in power. As he said it was not an occasion for partisan politics, I would like to remind him that the party which deliberately broke the national consensus on VAT for narrow partisan politics, is not in a position to give advice on a national consensus on the Patents Act. He also made a large number of substantive objections to the amendment Bill on which I will deal in the course of my presentation. As far as the procedural issues, which he has raised, are concerned, that is for the senior parliamentary managers of the UPA to explain as to why the urgency exists for getting this Bill passed in this House today itself. Sir, I want to

divide my presentation into three distinct segments. I want to deal a little bit with history. Unfortunately, Dr. Murli 9 Manohar Joshi is not here. But I do want to delve into a little bit of history because, I think, history is important. Then, I want to deal with some of the substantive issues of the amendments that have been proposed today, to allay some of the fears that have been expressed not just by the Opposition, but also by my own colleagues, in fact by my colleague right to the next of me. He was worried whether the prices of medicines were going to go up as a result of the introduction of product patents. Then, I want to raise some larger issues that are thrown out by this process of legislative change as far as Intellectual Property Rights are concerned.

Sir, first, let me deal with history. Sir, I have been associated with this for 20 years now. The debate on product patents is not new; it started in 1985. the first time the issue of India making changes in its Intellectual Property Rights regime was discussed in the international arena goes back 20 years ago. it then, of course, formed part of international negotiations. Between 1985 and 1988,I have drawn a long milestone and I do not want to go into yearly milestones. But when the issue of Intellectual Property Rights, what then became the TRIPS Agreement, first came on the international arena — and Mr. Yashwant Sinha knows it—India expressed severe and strenuous objection to bringing the whole issue of Intellectual Property Rights as part of international trade negotiations. It was our consistent and principal stand at that time that the Patents Act of 1970 had fulfilled the national objective very well and in any case, IPR is not an issue that has to be linked to international trade. Sir,if you look at the records of the WTO, first of GATT and then the WTO, you will find that in 1988-89, India made detailed submissions to the international organisations and I think Mr. Gill was Secretary of the Department of Chemicals during that era. India made detailed submissions to the international organisations, protesting against any change in Intellectual Property Right regime and protesting against the linkage of Intellectual Property Right and international trade. Sir, in 1990, Argentina, Chile, Columbia, Cuba, Egypt, India, Nigeria, Peru, Tanzania and Uruguay, these developing countries made another detailed submission to GATT, saying that what would become the TRIPS Agrement is not in the interests of the developing countries and that there should be no linkage between Intellectual Property Rights and the issue of international trade. Sir, the issue then got frozen. Then, we had, what has now come to be called, the Dunkel Draft, which incorporated in the agreement of Intellectual Property Rights. Sir, the two articles that

Dr. Murli Manohar Joshi read out this morning before lunch, Article 7 and Article 8 on the Agreement on Trade are also aspects of Intellectual Property Rights, were the signal contribution of Indian negotiators. I want to say this because there has been a consistent propaganda in this country — from political parties, from NGOs, in the media — that India capitulated to world opinion, that India did not stand up for its sovereignty, that India willingly allowed the abridgment of the sovereign rights that were accorded to it under the Patents Act of 1970. Let me read out article 7 and article 8. Article 7, which talks about the objective, reads thus:—

> *'The protection and enforcement of Intellectual Property Rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."*

Sir, this was included expressly at the instance of India. Article 8 talks about the principles of the TRIPS Agreement. This is very important. This is what the debate has been in this country. The article reads as follows:—

> "1. Members may, informulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.
>
> 2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of Intellectual Property Rights by right-holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology."

Sir, I don't want to get too much into history, but I do want to talk about article 7 and article 8 which lay the groundwork, which is more than a preamble to the TRIPS Agreement and this has been, when you go back and look at the records or the documentation, a very major contribution that India has made to the debate on Intellectual Property Rights.

Sir, what happened finally? Finally, the WTO came into being on 1st January, 1995 and all the countries, I wish Mr. Yashwant Sinha listens to this, that stood with us in 1990, one by one abandoned us. Argentina

abandoned us; Chile abandoned us; Columbia abandoned us; Even Cuba abandoned us; Egypt abandoned us. India, of course, was left standing alone. Nigeria abandoned us; Peru abandoned us; Tanzania abandoned us; Uruguay abandoned us.

SHRI N. JOTHI (Tamil Nadu): Which is the last country? *(Interruptions)*

SHRI JAIRAM RAMESH: I will explain. Please listen to me. I might add here that Brazil, which was not a signatory to this submission, also abandoned us. And, Sir, in the meanwhile, China, which is not a member of the WTO or GATT, went ahead and made changes in its Intellectual Property Regime. So, when the WTO came into being in 1995, cutting across all the legal jargons, we were given ten years. We worked out, in my view, a sweet-heart deal with the WTO. We could not have asked for a better deal. We were given ten years to bring about changes in our Intellectual Property Rights Regime, basically, to introduce product patents in the area of pharmaceuticals and chemicals. Sir, between 1995 and 1998, we were taken to the Disputes Settlement in the WTO. We lost in the WTO. Incidentally, I should mention here that not many of us are aware that, while we were losing these cases on Intellectual Property Rights, the former Commerce Minister will recall that we were winning cases on textiles; we were winning cases on export of shirmps. So, in the WTO, we were winning cases, and we were losing cases. We were winning in some areas, we were losing in some areas, and the most important area in which we lost was, the area of Intellectual Property Rights, and that formed the background of the First Patents Amendment that took place, if I recall correctly, in March 1999. Thereafter, you had the JPC's forty sittings over two years, and then you had in June 2002, if I recall correctly, the Second Patents Amendment, and now, we are discussing the Third Patents (Amendment) Bill, 2005. Sir, the crux of this Amendment Bill that we are discussing, is on the introduction of product patents in pharmaceuticals. This is not a paradigm shift that Mr. yashwant Sinha was talking about. For twenty years, this country has known that there is a writing on the wall. We were given ten years to carry out these changes. This debate has taken place for ten years. There has been a J PC. The concept of product patent was, in fact, discussed in the JPC, and this issue has made strange bed fellows, and brought about strange alliances. I recall, in 1996, I attended a meeting, in which there was a joint representation by Dr. Murli Manohar Joshi, George Fernandes and Dr. Ashok Mitra. So, it is not true to say that people did not know that product patent was inevitable or was round the corner. At every step, the debate in

this country, whether it is in the media, whether it is in the industry associations, whether it is in the NGOs sector, both domestic and international, has always focussed on the shift from process patents to product patents in the area of pharmaceuticals.

SHRI YASHWANT SINHA: Kindly yield for a minute. Nobody made the point that we were taken by surprise.

SHRIMATI SUSHMA SWARAJ: That was exactly what I said.

SHRI YASHWANT SINHA: We are now dealing with product patents. Mr. Jairam Ramesh is quite right in saying that we have been anticipating it for twenty years. The sad part is only this that at the end of twenty years, we have all ordinance to deal with it.

SHRI JAIRAM RAMESH: I will come to that, I will come to why we are in that sad situation. I should mention that in November 2001, as Mr. Yashwant Sinha pointed out, there was a Doha Declaration on Public Health, and this Doha Declaration on Public Health has to be read in conjunction with the TRIPS Agreement. This Doha Declaration is very important because it deals with two-three issues, which have formed the crux of the opposition to product patents. The issue of HIV AIDS was raised by you, and the issue of future public health emergency was also raised by you, and I will explain the same a little later. The Doha Declaration of November 2001, was negotiated by a Commerce Minister of your regime, late Shri Murasoli Maran. It has, in fact, provided enough flexibility in the Intellectual Property Regime, to deal with the issue of HIV AIDS, to deal with the tuberculosis and to deal with the issue of malaria, ... three very important health problems that are affecting this country. Sir, as I said, this is a very abbreviated history of a long and tortuous 20 years debate that took place on the need for India to change its intellectual property rights regime. Sir, let me also say this that in the mid eighties, the debate that took place in this country, in the Indian scientist community particularly, was that we should have a world-class patent system not just because GATT or WTO is telling us to do so, not just because TRIPS is enjoining us to do so, but also because it is in our interest as a very major scientist and technological power, it is in our interest as a knowledge-based economy, to have a world-class patent system. And today — I will give you the figures, Sir to show this — India has become or the Indian research, scientists and organisations — Mr. Kapil Sibal is here — the CSIR, has become one of the major patenters in the world. Sir, the argument that India must have a patent system, a world-class patent system, is not

because TRIPS enjoins us, not because we have to fulfil international obligations, important as that is. Having a world-class system is important because we want to be a world-class scientist and technological power. Unless we have a world-class patent system, a world-class intellectual property rights system, we are not going to be in a position to fulfil our position of being a world-class S&T power. And that, in my view, is really the lesson of the last 20 years. Unfortunately, Sir, in are after area, we do things only in response to crisis. It is only when there is a foreign devil hovering around us that we respond. As a country, we are adept at creating crisis, but we are more than adept at managing crisis. It would have been better if we had changed our intellectual property rights system in response to our own ambitions, in response to our aspirations, rather than being discussing today a response to an international situation or an international obligation that is imposed upon us.

Sir, there is another lesson from the last 20 years history. I want to refer to the Common Minimum Programme which was drafted just before this Government came to power. Sir, in the section on "Foreign Policy and International Obligations," — I will just read out four lines — it is mentioned:

> "In keeping with the stance adopted by the late Shri Murasoli Maran .....

This talks of national consensus. This is a document of the UPA Government, the Common Minimum Programme of the UPA Government. Of course, Mr. Maran's party is now a part of our Alliance.

> " ..... at Doha, the UPA Government will fully support and protect the national interests, particularly of farmers, in all WTO negotiations."

That is well known. The next four lines are critical.

> "Commitments made earlier will be adhered to even as efforts are mounted to ensure that all Agreements reflect our concerns, particularly in the area of intellectual property and agriculture."

In other words, Sir, the issue of TRIPS and the issue of patents raise the larger issue of 'how does India exercise its global leverage'. Are you part of an international system that advocates change and lobbies for change? Or do you stay out and throw stones, feeling happy and then be isolated? As I have tried to show to you, today, out of 190 countries in the world, including the U.K., Mr. Sinha, — U.K. has product patents — India is the only country in the world today, which does not have product patent for pharmaceuticals. The argument really is that if you want to change

TRIPS — and it is not my case that this legislation is the last word, either domestically or internationally; a lot morechanges have to be made, particularly in the TRIPS Agreement— India's leverage will increase once it is fully TRIPS compliant.

India's leverage would be fully met. India's bargaining position, strength will be better when it is seen to be fully compliant with the international obligations, rather than arguing about the Select Committees and the Standing Committees and be seen not to be fulfilling the international obligations for some narrow partisan purposes which, both you and I know, is not what is required.

Sir, let me now move to the second part of the debate that is taking place in this country. Sir, I will take only about ten minutes. Do I have ten minutes?

MR. DEPUTY CHAIRMAN: You carry on.

SHRI JAIRAM RAMESH: Sir, this is an important issue. A lot of my colleagues, Mr. Shahid Siddiqui of the Samajwadi Party, etc., have raised these issues. What will happpen to the price of medicines? What will happen to HIV and AIDS? What will happen to tuberculosis? I what to, address three or four of these issues in the course of my speech. I am sure, the Minister himself would, of course, be making a very lengthy intervention. But I do want to make one or two points on these issues.

As far as some of the main issues are concerned, the most important issue is: What will happen to the price of essential drugs? In the last 15 years, the argument has been that the price of essential drugs would go up. I want to remind Mr. Yashwant Sinha, who has been in the Government for 30 years, and he knows it, about the background of the Intellectual Property Rights, the Patent Act of 1970. What has kept the price of drugs down in India is not so much the Patent Act as much as the Drug Price Control Order. That is the fact that we always forget. We think that it is only the Patent Act that is reponsible for low pharmaceutical prices in this country. I beg to disagree and I have a former Pharmaceutical Secretary sitting right next to me, who administered the DPCO for three or four years. It is Drug Price Control Order that has kept the price of essential medicines down; and there is nothing in TRIPS, there is nothing in the Patent (Amendment) Bill we are discussing today that is diluting the DPCO, It is entirely up to the Government of India to declare a drug as an essential drug and bring that essential drug, whether it is patented or not, under the

ambit of price control. That sovereign right of the Government vests in the Drug Price Control Order and that is not diluted in any manner by the amendments that we are discussing today.

Now, Sir, what is an essential drug and what is not an essential drug is a separte matter, a separate issue, which we can debate. There are some people who argue that we must have only 75 essential drugs. There are some people who say that we must have 400 essential drugs, I am not getting into that debate. All that I am saying is that it is entirely up to the Government of India, the Government of the day, to declare a drug as an essential drug and bring it automatically under the ambit of the Drug Price Control Order which is implemented by the National Pharmaceutical Pricing Authority of India, a statutory body in the Ministry of Chemicals and Fertilizers.

[THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA) in the chain] As far as the price of essential drugs is concerned, it is true that almost 90 per cent—the Minister may correct me, if my figures are wrong-of the essential drugs in the market today are off patent. Mr. Kapil Sibal reminds me that it is 97 per cent. Ninety-seven per cent of the essential drugs in the market are off patent. Mr. Siddiqui, at least, their patents have expired. They are generics right now. They are not bound by the patent legislation or regulations. For the time being, let us assume that, in the next five years, some new drug is discovered in the category of what is considered essential by the Government. Then, of course, there will be a large number of questions and concerns as Mr. Yashwant Sinha has articulated, as the NGOs have articulated, as the Joint Parliamentary Committee has articulated. 1 have made a list of some of these concerns. What happens if a patented medicine is not available? What happens if a patented product is sold at an exorbitant price? What happens if there is a public health crisis? What happens if a patent pirates traditional knowlege? Dr. Murli Manohar Joshi is not here. He talked about neem, turmeric, *basmati rice,* etc. What.happens if a patent pirates what is known in the *shlokas,* particularly, in the Atharva Veda? What happens if a patent does not work in India? What happens if a patented product is only, imported and is not manufactured? These are all questions that have been raised in the last 10 years. They have been addressed in the J PC report. They have been addressed, time and again, whenever the successive Governments have had the opportunity. Your own Government tried to address this issue when it brought forward the second patents (Amendment) Bill. If you look . at the Patents Act, .if you look at the Patents Act of 1970 read in conjunction

with the first Patents (Amendment) Bill or 1999, which is now, of course, a law, and the second Patents (Amendment) Bill of 2000, which is also now a law, you will find that there are three or four sections in the Patents Act which deal with all these eventualities. One, Sir, as Shri Yashwant Sinha has mentioned, is the whole area of compulsory licensing. There is a whole section in the Act that deals with compulcory licensing in a very detailed fashion. Compulsory licensing in simple English means that if the Government wants to license a particular product, it can compulsorily, jolly well, do so, if it thinks that it is in the public interest. I might add here that is the 30 years— I wonder whether Shri Yashwant Sinha knows this— when the Indian Patents Act of 1970 has been in force, compulsory licensing has never been invoked by the Government except on one occasion, in so far as an agro-chemical product is concerned. It has never been invoked for a pharmaceutical emergency. But the threat of having compulsory licensing is seen to be a very powerful deterrent to monopolistic and anti-competitive behaviour. I would argue that the provision's that exist for compulsory licensing, which are basically reflective of the Bill that the NDA Government itself had brought forward, is in my view enough ammunition in the hands of the Government to deal with all the emergencies and exigencies that have been raised. There is also a section in the Patents Act, both in the original Patents Act and in the amended Patents Act. I do not want to take too much time of the House in dealing with all these sections. But the relevant sections are Section 47,Sections 82-84 and Section 107 (a) and (b) which deals with parallel imports. You have talked about Africa. You have talked about African countries that are beholding to Indian manufacturers. That is very much there in Section 100. Then if at all a drug is not available, if at all a patented medicine is just simply not available, then there are, particularly, Sections 100 and 102 that give the .power to the Government to import the product for its own use or for distribution through the Public Health Delivery System. The short point that I want to make is that, on the issue of prices, on the issue of availability of patented medicine, on the issue of the ability of the Government to retain the right of ensuring that the patent is translated into a product, there are enough safeguards in the exising legislation both in the 1970 legislation, but more importantly in the revised patents Act of 1970 reflecting the new provisions for compulsory licensing, reflecting the new provisions for parallel import particularly; and also reflecting the new provisions for enabling the Government to import and use and distribute for its own use either through itself or through the third party. It is not my case to suggest that prices of medicines are not going to rise. It is perfactly possible. But there could be

instances where prices of medicine could rise. But as I said, there are other instruments that are available in the hands of the Government, particularly the Drug Price Control Order, to bring down and moderate the level of prices. In any case, in the long run, we are hoping that competition, increased investment in the pharmaceutical industry is going to be a real answer for ensuring widespread availability of drugs and medicines at affordable prices.

Finally, let me just deal very quickly with-three or four larger issues that come out of this hole debate on Intellectual Property Rights. First, as I mentioned it earlier, today let us not think that we are bringing about this change only because WTO is pressurising us to do it. There is a pressure on us from our own scientific c34ommunity, from our own technological community, from our own research institutions. Sir, today, the CSIR has become the largest single patenter, from developing countries, of medicines in the U.S. market. Shri Yashwant Sinha talked about multinationals coming to the Indian market. Indians are going to the American markets and patenting. Ranbaxy is patenting in America. Dr. Reddy's Laboratory is patenting in America. The CSIR is patenting in America. So, this two-way street of companies coming to India to patent and Indian companies going abroad to patent is taking place. And, if India wants to be a leading scientific powerhouse. I think, it s important for us to give India a world-class Intellectual Property Regime. In Bangalore today, there exists—I do not know how many of the Members of Parliament have seen this; Mr. Sibal must have surely gone there—the world's largest industrial research laboratory. Sir, the world's largest industrial research laboratory in the private sector is 10 minutes drive from the Bangalore International Airport; that is, Jack Welch Technology Centre. One thousand PhDs are working under one roof, out of whom 700 PhDs are Indians, who have worked abroad, and have come back. For them, patents are important. Patents are important for scientists working in ICAR and IARI. Patents are important for scientists working in the DRDO, one of whom became the President of fndia. Patents are important for scientists working in the ICMR. So, let us not give ourselves the impression that just because there is somebody holding a rifle on our head, and that rifle's brand is WTO or TRIPS, that we have to bring about this change. No, I think, the real reason why we should bring about this change is to give our own scientists and our own technologists increasing opportunities to exploit their scientific and technological skills. Secondly, Shri Yashwant Sinha talked about the issue of patent examiners. I don't know how many Members of Parliament

have been to our patent office. There is one dilapidated office in Karol Bagh. If you go to China, you will find a 40-storey building which is working in the area of patent administration and patent examination. And, I would argue, Sir, increasingly, patents have become a very scientific, a highly technology-driven exercise. You talked of having 3,000 examiners. Most of the examiners in other countries are highly skilled professionals with an ability to read and understand patents. And, this is an issue which, I believe, we need to pay close attention to. We have to modernise our patent administration system. We have to upgrade the human resource skills in our Patent and Trade Mark Offices. And give them modern technolgical skills. Sir, I remember, when late Shri Rajiv Gandhi was looking at the whole area of weather forecasting, he discovered to his horror that the Indian Meteorological Department was run by the 'Ministry of Civil Aviation. And, the first decision that Shri Rajiv Gandhi took after he became the Prime Minister was to transfer the Indian Meteorological Department from the Ministry of Civil Aviation to the Department of Science and Technology, and that triggered the entire process of technological modernisation of the IMD, including India's importing the Cray's supercomputer. I would argue that the time has come for us to treat our patent office in a similar manner. In fact, I would go as far as to argue to transfer— Shri Kamal Nath would not like this—the patent office from the Ministry of industry to the Department of Science and Technology, because patents is not a bureaucratic issue any more. Patents is no longer an issue of negotiating with WIPO and WTO. Patents is a scientific and technological issue that demands scientific and technological skills of the highest order.

Finally, Sir, is the whole issue of traditional knowledge. Dr. Murli Manohar Joshi mentioned the area of *neem, haldi* and *turmeric*. Now, this is an area of great concern. There is nothing in the law that we are passing today, there is nothing in TRIPS, which prevents us from having laws to protect our own bio-diversity, in our own hands. In fact, the CSIR has fought and won cases in the area of *basmati*. It has successfully fought the patent in the area of *haldi,* and it has also, if I resall correctly; successfully won a patent case in the area of turmeric. The area of turmeric is very interesting, Sir. Two Indian scientists working in the U.S. had applied for a patent on turmeric. The patent examiner in the U.S. Patent Office was an Indian. And the people who appealed against the U.S. decision were Indians. It shows the globalisation of Indian science and technology. The people wanting to patent were indians in the U.S. The people who examined it were Indians. And the people who successfully objected to it were Indians.

Mr. Fali S. Nariman was one of the lawyers associated with this epochal case.

Let me now summarise and say that whatever procedural disagreements there may be, I believe that the step that we are taking today is not just a step born out of compulsion of the WTO regime, but it is a step born out of conviction that we must have a world-class intellectual property regime and a world-class product patent regime, to reward our own scientists and technologists. And, I believe, that with this patents system, there are other instruments that are available with the Government to ensure that the prices of essential medicines, the prices of essential drugs, do not skyrocket and the common man is riot adversely affected.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Mr. Nilotpal Basu. You have fourteen minutes.

SHRI NILOTPAL BASU: Sir, please bear with me. This is a serious subject. I may exceed the time-limit a litte.

Sir, at the very outset, I would like to extend the support to this Bill on behalf of our party. I am not falling in line. I am consciously supporting this Bill. So, if there is any confusion anywhere in the House and if it is being construed as our falling in line, I would like to disabuse that.

Sir, in my eleven years of being in this august House, never have I heard such a fervent appeal for legislative propriety, for having a legislation examined by the Standing Committee. It is a little ironical for me because I have seen in this House legislation being done through the Ordinance route, than being passed in the Lok Sabha, just to remove the Chief Executive Officer of a public sector organisation, and not being pursued in this House because that legislation could never have got passed. And the author of that entire legislation again, Shrimati Sushma Swaraj, today lecturing me on the need for processing this Bill through a Standing Committee, is a little too much for me to digest. *(Interruptions)* and she will recall that just to remove the Chief Executive Officer of the Prasar Bharti, an Ordinance was brought. *(Interruptions)*

श्रीमती सुषमा स्वराज : महोदय, यह मिसलीड कर रहे है, यह दसवीं बार इसी बात को बोल रहे हैं किन्तु हर बार मैंने इन्हें बताया कि यह आया था । ये दसवीं बार इसी बात को बोल रहा हैं ।

SHRI NILOTPAL BASU: I am not yielding.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): If he is not yielding, I cant help it. *(Interruptions)* इनको बोलने दीजिए, फिर समय का भी ध्यान रखें ।

श्रीमती सुषमा स्वराज : उस समय मैं स्वयं मंत्री थी, यह बिल्कुल गलत कह रहे है और सदन को गुमराह कर रहे है । ...(**व्यवधान**)...

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): If he is not yielding, I can't help it. *(Interruptions)*

SHRI NILOTPAL BASU: Sir, you can go through the record, I am speaking on facts. *(Interniptions)*

उपसभाध्यक्ष (**श्री संतोष बागड़ोदिया**) : आप रहने भी दीजिए ना ।

श्रीमती सुषमा स्वराज : मेरी भाषा असंयमी और गैर – शालीन नही हो सकती, मैंने "कर रहे है" ही कहा है, "कर रहा है" नही कहा ।

उपसभाध्यक्ष (**श्री संतोष बागड़ोदिया**) : ठीक है, ठीक है । Basuji, close it now. Otherwise, are you yielding?

SHRI NILOTPAL BASU: I am making a procedural point which I wanted to make in the morning. If somebody is objecting and I am yielding, what is the problem? *(Interruptions)*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): If you are yielding, it is all right. But if you are not yielding.....

SHRI NILOTPAL BASU: Sir, 1 was yielding.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Then, it will go out of your time.

SHRI NILOTPAL BASU: Sir, I have also been very, very dilligently following the rules and procedures of the House, I am aware, Sir.

The point is that we are discussing a Bill which according to Mr. Sinha, Mrs. Sushma Swaraj, Dr. Joshl; who is not present, have to be referred to the Standing Committee. Fortunately, I have the report of the Joint Parliamentary Committee with me; it was placed in the House in 2002.1 find here a note of dissent by my colleagues in this House and in the other House. Noted. I have also heard one of the greatest articulate defence of a national consensus. I find this note of dissent as part of the official amendments, which were moved by the hon. Commerce Minister, yesterday, in the other House and, as Press reports suggest, they got passed. I am telling that there has been a greater effort in achieving a national consensus, while placing this Bill before the House. That is the

position. I mean, what is my experience is, there is no denying the fact, Sir, that everybody known that from day one, consistently, the Left in this country — Sir, with all humility, I say that some of the amendments Mr. Sinha has also suggested, I find resemblance with what we have suggested to the Government — over these years, has raised issues about the iniquitous global trading system that we are in, from the early 90s'. Sir, we have to understand it. I do not share Mr. Jairam Ramesh's position. Unfortunately, yes, we are working within the constraints. I think the Minister has already stated in the 'Statement of Objects and Reasons' that we are bringing this legislation in the background of fulfilling certain international commitments. This is a historical fact which nobody can wish off. But, the point is, yes, there is a world around us which we may like, or, which we may dislike. But, at the same time, we cannot wish off. I mean, it is a great thing that we did not have a patent regime, otherwise,wheel, which was the first invention, might not have really contributed to the extent that it has contributed to the marching of civilisation. And, over a large period of our human civilisation of the recorded history of mankind has been expressed, time and again, that science, scientific invention, technology should be allowed to proliferate in such a manner that it contributes to the general good of the human kind. Therefore, patent, essentially and inherently has a restrictive effect, which nobody can deny. Now, the point is, what kind of patent regime we should have? The question is, whether in awarding the patent holder, in awarding the inventor, we take care of the concerns of the users. That is the question. Whether at any given point of time, we are properly being able to balance the interests of the holder, the inventor and, on the other hand, the user of that technology or that invention. That is the question. And, there is no doubt about that.

Sir, inequities exist in this world. Somewhere, down the line, Mr. Sinha was implicitly saying that this Bill, which is tabled here today, is TRIPS plus. Instead of being TRIPS compliance, it is TRIPs plus. I will come to that shortly. But, whether it is TRIPS plus or not, I do not know. But, at least, Mr. Sinha's position was, definitely, NDA minus because he was harking back to the days of Socialism, and his espousal of the case against multinationals would, I think also put Mr. Jibon Roy to shame. Sir, there has to be some limit to the unprincipled politics in this country. I mean, Mr. Sinha has the gumption to say that we are falling in line. You tell us, Sir, we have studied thoroughly the 1999 Act, the 2000 Act, then the JPC Report and the subsequent legislations. Where was he? We

knew there was a great degree of convergence between this side and that side. The Left was never in the picture because we were 'rebels'. And 'greatly misunderstood rebels! Because we always said, "Yes, this is an unequal fight and you have to carry that on." This has been rightly incorporated in the National Common Minimum Programme, "We want to have solidarity with the developing countries; we want to reverse iniquitous global trading system that we have." And till that time, we can't renegotiate or revoke this TRIPs. We have to have a situation where we have a law. And what do we with the law? We try to address the maximum possible flexibilities allowed within TRIPs. Not only Trips, you also incorporate the flexibilities allowed in para-6 of the Doha Declaration too, in compulsory licensing.

Sir, I have carefully studied the amendments moved by Mr. Sinha. Now, I don't find anything new in all areas. On those two questions — of new entities, micro-organisms — that he has given amendment, there is no agreement with the Government. I believe, the Minister will be kind enough to explain the position. And, that is why there has been an assurance in the other House that it will be referred to a tecnical committee, as reported in the press. But the question is again on micro-organisms; what you find is already the fight is on. Right from the day one that this provision was built into TRIPs Agreement, there were protests all over that microorganisms should not be allowed to be patented. And from day one, it was put on review and this is yet to be reviewed. That is the situation. That means, there are people, there are enough number of countries who feel that there are a lot of inequities built into the TRIPs. Therefore, if somebody, like Mr. Jairam Ramesh comes here espousing the greatness of the TRIPs, I say, "Sorry" though we are supporting the Bill. I think, we are supporting the Bill for right reasons and not for wrong reasons.

Sir, the other thing is, I would like to point out. *...(Interruptions)*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): No interruptions, please. This is a very serious discussion and we have a very limited time. Let us listen to him.

SHRI NILOTPAL BASU: I think, we are supporting the Bill for very right reasons because we understand that this Bill attempts—after the amendments that were finally moved by the Commerce Minister and that has been presented to us as passed by Lok Sabha—or tries to go into all possible areas where we have a small opening in TRIPs to make it more tight, stronger in defending the patent users' rights, that is, the people of

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our country, while not ignoring the patent-holders' rights in trying to comply with the conditions of the TRIPs. That is the sum total of the Bill and this has to be like this because, Sir, over the years also we have seen that, as I said, in a particular global international political context, this whole notion of WTO came. Who knew of all these international processes? Because, they were merely into trade and commerce, earlier. But now they have spilled over, they have encroached on other areas of international politics, international finance. And, we have a situation where in the whole world also, today, there is a growing awareness against that kind of globalisation which is bringing so much of harm to the lives of millions of poor people in the world.

Therefore, there is an increasing resistance. Dr. Joshi was, in the morning, reading out from letters given to some members countries of the WTO. Sir, with all humility we are trying to point out that the amendments that we have suggested to the Government are not just 'Left' amendments. It is not just 'CPI(M), amendments. These are also the amendments suggested by hundreds of great men and women working in this field in the last 10-15 years. Some of the great men and women gave evidence before the JPC. There are names. I do not know whether you have gone through the submissions by Dr. Vandana shiva or Mr. Keayla. They have contributed and from a critical point of view they tried to examine. All that body of opinion has gone into the amendments that we have proposed. Sir, Dr. Joshi was referring to the African countries. Fortunately or unfortunately, for the last seven days I have received phone calls from South Africa, from Zimbabwe, from so many Namibians, from some of the European countries. Our friends of Left are united in the European Parliament because they are also in the forefront of this attempting to refashion the direction of the WTO and direction of the Intellectual Property Organisation. Sir, we are also not fools. We understand what we are doing. And consciously *...(Interruptions)...*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Please do not interrupt. *...(Interruptions)...* He has not named you. *...(Interruptions)...* Why do you want to interrupt? *...(Interruptions)...* Please continue.

SHRI NILOTPAL BASU: Therefore, Sir, we have gone through the Ordinance with a fine toothcomb since these elements were absent. You have seen, Sir, that drama in the morning that why Nilotpal Basu moved a Disapproval Motion to the Ordinance. Sir, we are perfectly justified in moving that Disapproval Motion in the beginning when the Ordinance was there.

Now, since the Ordinance has gone and we are considering a completely new Bill, I am completely entitled to withdraw that Ordinance. Now this is the difference in understanding. Or, I do not know whether it is wilful lack of understanding that where the situation is heading towards. We have not changed our position. All our amendments, after having gone through a fine toothcomb, have been accepted. You get substantially where we are talking of the Definition of Invention, the Inventive Steps, the whole question novelty, and the kind of haziness that was there that has been removed. The question of compulsory licensing — now it is not just medical emergency but other conditions whereby we haveexpanded the area where the Government could apply in transitional period. It was not there in 2002— frontloading of the grant of patent — it was to be given from the date of application. Now it will be from the date of grant of patent. All these major areas in the Patent Bill have been tightened through the adoption of the amendments, which have come as official amendments of the Government. Therefore, if somebody thinks that they are great enough not to fall in line, I would say they are practising unprincipled politics. Till the other day, you told us*...(Interruptions)...* Sir, through you, I would put this question to Mr. Sinha or Mrs. Swaraj*...(Interruptions)...*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Do not put questions. *...(Interruptions)...* They would start interrupting. *...(Interruptions)...*

SHRI YASHWANT SINHA: If he asks us, we will reply.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Please sit down. Let him ask first.

SHRI NILOTPAL BASU: Mr. Sinha is a seasoned politician or a seasoned parliamentarian to catch the mistake when Jairam Ramesh makes it. But he should also understand what a turn of phrase means. Therefore, I would ask about the difference between the 2002 Act and this Bill and whether the amendments that have been proposed and that have been passed by the Lok Sabha strengthen the Bill or not. I want an answer whether this has strengthened or not. If that has strengthened, there is no reasons why *...(Interruptions)...* I feel shy, Sir, I agree with this overall sentiment of Mr. Sinha that it is very sad that on this kind of a question whether there should be a national consensus, there is not a national consensus. Butt think there is or there will be no national consensus becuase the Opposition is standing on prestige. All these years they had no problem in marginalising the Left. I still remember when we were raising questions on economic

policy, he said that we have won and we are opposed to the approach of the Left Therefore, you can be done. This was the position. So, today, I feel a little sense of amusement also but I think he is right in the sense that there has to be a national consensus on the Bill and given the situation, Sir, it is correct. His other formulation is also very correct. The whole world is looking at us. When we were talking to the Government I made this comment to the hon. Commerce Minister that Sir, what we are doing actually is engaging in a process where India could become or recapture the role of the leader of the developing countries in articulating the concerns of all these poor nations. They are really looking at us. Therefore, I request two things. One is, because this is a very fast changing area, therefore, the Government should be prepared to come in the House because the proof of the pudding is in the eating. When it starts operating we might find certain things we have inadvertently overlooked. So Government should be normally more pro-active in bringing amendments to this Act as compared to the other Acts that we normally have. Therefore, I think there is absolutely no problem, and whatever weaknesses remain in the consensus building process, that can be overcome. The other thing, Sir, I also do not agree that this Bill can insulate the drug prices in this country or fertilizer in this country or some of the products of invention that our people use. I think, therefore, the attempt has to be to create some kind of a Price Stabilisation Fund which can really support Research and Development initiatives which can take off because this is a poor country and big companies can be there who are capable of doing this. But at the same time, if you look at the records of Research and Development in this country, — Mr. Jairam Ramesh was also mentioning that major contribution is by CSIR — 99 per cent of expenditure since Independence in this country has been through public investment. Therefore, when we are competing in this kind of a hostile atmosphere there should be public support for Research and Development and ultimately their translation into patents. So Stabilisation Fund is a must and the second thing is upgradation of the Patent Office. I think, Sir, I will just, through you, remind the hon. Minister that there was a very good report of the Commerce and Industry Standing Committee which was at that point of time Chaired by Dr. Ashok Mitra, whom Shri Jairam Ramesh referred to. They had really given very good suggestions in terms of upgrading the patenting system in this country. I think with a little bit of upgrading many of those things are very relevant and they can be used. Finally, I reiterate our support to the Bill. I know there are two provisions on which we do not see aye to eye, on microorganisms and expansion of the notion of new chemical entity and new

entity. So, that is there. I suppose that Minister has reported in the Press and assured that it will be referred to a technical committee but at the same time, I feel, technically, even if it is not found that it is not TRIPS compliant, our country should lead an effort to re-negotiate some of the conditions. I would request, Mr. Jalan to yield for a moment. But I think...

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): You have no time to yield. This is the House's time.

SHRI NILOTPAL BASU: So, I welcome the spirit of consensus which Mr. Sinha has spoken about and fervently appeal to him. There may be some differences on fine point still. But I point out with all humility, the kind of effort that Left parties have undertaken in these last few months, particularly in the last 15 days, we are speaking not merely on behalf of ourselves, we have also tried to take your views, your concerns. I mean, that is why I also feel that all these amendments that you have proposed from the basic body of amendments we discussed with the Government. And, I believe, the same holds good for other parties also. Therefore, let us not get divided along the lines of NDA, UPA and the Left. This message is very, very important that the Indian Parliament today has passed the Patents (Amendment) Bill, unanimously. If there are problems, J would urge upon the Government that in the fastest possible time it should lake steps to further strengthen this Patent regime that we are going to have after the notification by the President. I hope, in the spirit of cooperation, in the spirit of consensus, we must agree to this. Political debates, political differences, name-calling will go on. At the same time, I, actually, agree with the call for a national consensus that you have given, even though you have not shown us that favour. I think your spirit is right. Therefore, 1 would further appeal to have a consensus and consensually pass the Bill.

With these words, Sir, I conclude my speech, Thank You.

† **श्री शाहिद सिद्दिकी (उत्तर प्रदेश)** : उपसभाध्यक्ष महोदय, मैं आज बहुत भारी मन से और कहना चाहिए कि बहुत कन्फ्यूज़न के साथ यहां खड़ा हुआ हूं। मैं आज बहुत कन्फ्यूज्ड हूं, इसलिए कन्फ्यूज्ड हूं कि कल तक जो लोग इस बिल का समर्थन कर रहे थे, जो लोग इस बिल को लाए थे, वे आज इसके विरोध में बैठे हैं, जो कल तक विरोध कर रहे थे, वे आज इसके सबसे बड़े डिफेंडर बन गए हैं, जो कल इसमें कीड़े निकाल रहे थे, वे आज इसकी खूबियां गिना रहे है, जो कल इसकी खूबियां बता रहे थे, वे आज इसमें कीड़े निकाल रहे है। इसलिए मेरे जैसा आदमी, जो इस सदन में नया आया है और वह एक मामूली तालिब – इल्म है भारतीय राजनीति का, उसका कन्फ्यूज्ड होना अनिवार्य है, कुदरती है।

†Translation of Urdu Script.

उपसभाध्यक्ष महोदय, मैं यह कहना चाहूंगा कि इस सदन में दोनों तरफ से अंतर्राष्ट्रीय कमिटमेंट की बात की गई। कहा गया कि हमारा कमिटमेंट है WTO से, ट्रिप्स एग्रीमेंट के लिए हमारा कमिटमेंट है और हमारे लिए इस कमिटमेंट को पूरा करना जरूरी है। मैं जानना चाहूंगा कि जितने भी हम दल है, क्या हमारा कमिटमेंट इस देश की जनता के लिए नही है? क्या हम पिछले 58 सालों से कमिटमेंट नही करते आए हैं – पानी का हेल्थ का, सस्ती दवाइयों का, सस्ती शिक्षा का? क्या हमने उन कमिटमेंट को पूरा किया है और आज भी हम जो कमिटमेंट करके आए हैं, क्या हमने उन्हें पूरा किया है? क्या हमारे जो अंतर्राष्ट्रीय कमिटमेंट्स हैं, जो हमने युनाइटेड नेशंस से किए हैं कि हम 6 परसेंट शिक्षा पर खर्च करेंगे, हैल्थ के क्षेत्र में खर्च करेंगे, क्या हमने उन कमिटमेंट्स को पूरा किया है? नही, हमने उन्हें पूरा नही किया है, लेकिन यह कमिटमेंट इतना महत्वपूर्ण हो गया है कि इसके ऊपर दोस्त और दुश्मन एक हो गए हैं, विरोधी एक हो गए है। आखिर क्या खास बात है इसके अंदर, जैसा कि कहा गया कि आसमान गिर जाएगा अगर 5-7-10 दिनों के लिए भी इसके लिए कानून मौजूद नही रहा ठीक है, इंटरनेशनल कमिटमेंट हैं, इसको पूरा करना है, मैं भी इसके साथ हूं , लेकिन आपने जिस तरह पिछले दरवाजे से इसे आर्डिनेंस के जरिए लाने की कोशिश की, वह कोई अच्छी बात नही है, क्योंकि इसके ऊपर ईमानदारी से बात होनी चाहिए थी, इस विषय पर खुलकर बात होनी चाहिए थी, देश के हित में बात होनी चाहिए थी, पार्टी पोलिटिक्स से ऊपर उठकर बात होनी चाहिए थी, लेकिन ऐसा नही हो पाया। हमारे नीलोत्पल बसु जी चले गए...(**व्यवधान**)...

شری شاہد صدیقي "اتر پردیش":آپ سبھا ادھیکش مہودے، میں آج بہت بھاری من سے اور کہنا چاہئے کہ بہت کنفوژن کے ساتھ یہاں کھڑا ہواہوں میں آج بہت کنفیوژڈ ہوں، اس لئے کنفیوژ ہوں کہ کل تک جو لوگ اس بل کاسمرتھن کر رہے تھے، جو اس بل کولائے تھے وہ آج اس کے ورودھ میں بیٹھے ہیں، جو کل تک ورودھ کر رئے تھے وہ آج اس کے سب سے بڑے ڈفینڈر بن گئے ہیں،جو کل اس میں کیڑے نکال رئے تھے وہ آج اس کی خوبیاں گنوا رہے ہیں- جو کل اس کی خوبیاں بتا رے تھے وہ آج اس میں کیڑے نکال رے ہیں۔ اس لئے میرےجیسے ادمی جواس سدن میں نیا آیا ہے اور ایک معمولی طالب علم ہے،بھارتی راجنیتی کا- اس کا کنفیوژ ہونا ضروری ہے،قدرتی ہے-آپ سبھاادھیکش مہودئے میں یہ کہنا چاہوں گا کہ اس سدن میں دونوں طرف سے بین الاقوامی کی بات کی گئ- کہا گیا ہے کہ ہمارا کمٹمینٹ ہے TOWسے، ٹرپس ایگری مینٹ کے کئے ہمارا کمٹمینٹ ہے اور ہمارے لئے اس کمٹمینٹ کو پورا کرنا ضروری ہے- میں جاننا چاہوں گا کہ جتنے بھی ہم ول کیا ہمارا کمٹمینٹ اس دیش کی جنتا کے لئے نہیں ہے؟ کیا ہم پچھلے ۵۸ سالوں سے کمٹمینٹ نہیں کرتے آئے ہیں- پانی کا،صحت کا،

†Transliteration of Urdu Script.

سستی دواؤں کا، سستی تعلیم کا؟ کیا ہم نے ان کمٹمینٹ کو پورا کیا ہے اور آج بھی ہم جو کمٹمینٹ کر کے آئے ہیں، کیا ہم نے انہیں پورا کیا ہے؟ کیا ہمارے جو بیں الاقوامی کمٹمینٹ ہیں؟ جو ہم نے یونا ئٹیڈ نیشن سے کئے ہیں کہ ہم ٦ فصیر تعلیم پر خرچ کر گے، ہیلتھ کے چھیترمیں خرچ کریں گے- کیا ہم نے ان کمٹمینٹ کو پورا کیا ہے؟ نہیں ہم نے انہیں پورا نہیں کیا ہے- لیکن یہ کمٹمینٹ اتنا اہم ہو گیا ہے کہ اس کے اوپر دوشت اور دوشمن ایک ہو گئے ہیں، ورودھی ایک ہو گئے ہیں- آخر کیا خاص بات ہے اس کے کہا گیا کہ آسمان گر جائےگا اگر

دنوں کے لئے بھی اس کے لئے قانون موجود نہیں رہا- ٹھیک ہے،بین الاقومی کمٹمینٹ ہے- اس کو پورا کرنا ہے میں بھی اس کے ساتھ ہوں- لیکن آپ نے جس طرح پچھلے دروازے سے اسے آرڈیننس کے ذریے لانے کی کوشش کی وہ کوئ اچھی بات نہیں ہے- کیوں کہ اس کے اوپر ایمانداری سے بات ہونی چاہئے تھی اس موضوع پر کھل کر بات ہونی چاہئے تھی، دیش کے ہت میں بات ہونی چاہئے تھی، پارٹی پالیٹکس سے اوپراٹھ کر بات ہونی چاہئے تھی- لیکن ایسا نہیں ہو پایا، ہمارے نیلوتپل بسو چلے گئے ....مداخلت ....

श्री नीलोत्पल बसु : मैं यही हूं।

†श्री शाहिद सिद्दिकी : मैं उनको बधाई देना चाहूंगा, मैं लैफ्ट के लोगों को बधाई देना चाहूंगा कि उनकी बहुत सारे concerns हमारे concerns थे। हम बाहर बैठे हुए पिछले 10 सालों से जिन concerns को महसूस करते थे, उन concerns को उन्होंने उठाया और उन concerns को यहां पर लाकर रखा, लेकिन मुझे तकलीफ इस बात की हैं कि जब बिल बनाया था और मुझे इसका दुःख भी है, हैरानी है कि जब वह JPC के पास गया और JPCकी लंबी – लंबी मीटिंग्ज़ हुई, उसके बावजूद जो कानून बनकर आया, जो अमेंडमेंट्स आए, they were bad in law. वे देश के हित में नही थे, देश की जनता के हित में नही थे। आखिर ऐसा क्यों हुआ? क्या आपने पूरा ध्यान नही दिया या देश की जनता का हित आपका concern नही था? उसमें आप आज जो अमेंडमेंट्स लाए हैं, उससे किसी हद तक इसका अज़ाला हुआ है, इस कमी को हमने दूर किया है। लेकिन आज भी मैं कहूंगा कि इस देश की जनता का विरोधी, यह कानून जनता के हित में नही है। दवाओं के दाम, जय राम रमेश जी ने एश्योरेंस दिया है, मंत्री जी भी शायद देंगे कि इसमें बहुत कुछ खास प्रभाव नही होने वाला है। मुझे डर यह हैं कि शायद फौरी तौर पर इसका असर 97 प्रतिशत ड्रग्स पर नही होगा, लेकिन अगले 2,4,5 सालों के अन्दर इसका प्रभाव बड़े भारी पैमाने पर हम महसूस करेंगे, और दवाओं के दाम बढ़ेंगे। खास तौर पर कैंसर की दवाओं के दाम ऑलरेडी बहुत ज्यादा बढ़ गए हैं। मैं मंत्री जी से इसके लिए एश्योरेंस चाहूंगा। कैंसर जैसी बीमारी या जो हमारे मेंटली चैलेंज्ड बच्चे है, उनके लिए मुसलसल सारे जीवन उन्हें दवाएं देनी पड़ती है, सारे जीवन उनको दवाएं चाहिए होती है और वे दवाएं बहुत महंगी है। आज इसमें रिसर्च हो रहा है, मेंटल बीमारियों के बारे में हम पिछले 5,7,10 सालों से रिसर्च कर रहे है, उसको समझ पा रहे है, उसमें

दवाएं आ रही है । उन दवाओं के ऊपर जो पेटेंट होंगे, उनका भारी प्रभाव होगा, ये हमारे लोगो तक नही पहुंच पाएंगी । उसमें आप क्या कमिटमेंट दे सकते है? जैसा कि कहा गया कि एचआईवी, एड्स के बारे में या टीबी के बारे में दोहा (डीडीए) में इसका कमिटमेंट हुआ था कि इसके दाम नही बढ़ेंगे । लेकिन मैं कहना चाहूंगा कि आज दुनिया में हमारे यहां की जो फॉर्मास्युटिकल कंपनीज़ थी, हमारी जो ड्रग्स थी, उसके लिए हमें दुनिया की दुआएं मिल रही थी । पूरी दुनिया में भारत को एप्रोसिएट किया जा रहा था, खास तौर पर अफ्रीका और एशिया के गरीब देशों में । लेकिन आज कीनिया, तंजानिया, युगांडा में भारत के विरूद मुजाहिरें हो रही है, भारत के खिलाफ लोग सड़कों पर आ गए क्योंकि उन्हें डर है कि अगर वहां पर ये दवाएं इतनी महंगी मिलेंगी तो उनके जीवन पर इसका असर पड़ेगा । वहां पर वे लोग बहुत चिन्तित है । दुनिया भर के जो हैल्थ एडवोकट्स है, वे भारत में आकर डिमांस्ट्रेशन कर रहे है, हमसे अपील कर रहे है, भारत के मैम्बर्स ऑफ पार्लियामेंट से अपील कर रहे है की वे इस पर ध्यान दें और इस विषय को इतनी आसानी से, इतने हल्के तरीके से न लें । मुझे दुख यह है कि देर लगाई गई , इन्होंने लगाई या उन्होंने लगाई, लेकिन आखिर राज्य सभा के अन्दर मेरे जैसे लोगो को तो पढ़ने का समय भी नही मिला । सुबह हमारे पास 8.30 – 9 बजे इसकी अमेंडमेंट्स आई, हम उसको पढ़ कर समझ लेते, इतना समय नही था । इसलिए मैं अगर कंफ्यूज्ड हूं, तो इसलिए नही कि मैं समाजवादी पार्टी का मैम्बर हूं, मैं इसलिए कंफ्यूज्ड हूं कि आप सारे कंफ्यूज्ड है, मैं आपसे कहना चाहता हूं ...(**व्यवधान**)... कि आपको इस पर बहुत ज्यादा खुश होने की जरूरत नही है ।

شری شاہر صدیقی: میں ان کو بدھائ دینا چاہوں گا،میں لفٹ کے لوگوں کو بدھائ دینا چاہوگا کہ ان کی بہت سارے کنسرنس ہمارے کنسرنس تھے۔ہم باہر بیٹھے ہوئے پچھلے دس سالوں سے جن کنسر کو محسوس کرتے تھے ان کنسرنس کو انھوں نے اٹھایا اور ان کنسرنس کو یہاں پر لا کر رکھنا؛ لیکن مجھے تکلیف اس کی ہے کہ جب آپ نے بل بنایا تھا اور مجھے دکھ اس کا بھی ہے، حیرانی ہے کہ جب وہ جے.پی.سی. کے پاس گیا، اور جے.پی.سے. کی لمبی لمبی میٹنگیں ہوئیں، اس کے باد جو قانون بن کر آیا،جو امینڈ مینٹس آئےthey were bad in law وہ دیش کے ہت نہیں تھے،دیش کی جنتا کے ہت میں نہیں تھے۔ آخر ایسا کیوں ہوا؟ کیا آپ نے پورادھیان نہیں دیا یا دیش کی جنتا کاہت آپ کا کنسرن نہیں تھا؟ اس میں آج جوامینڈمینٹس لائے ہے اس میں کسی حد تک اس کا ازالہ ہوا ہے۔ اس کمی کو ہم نے دور کیا ہے۔ لیکن آج بھی میں کہوگا کہ اس دیس کی جنتا کا ورودھی،یہ قانون جنتا کے ہت میں نہیں ہے۔ دواؤں کے دام،جےرام رمیش جی نے ایشورینس دیا ہے، منتری جی بھی شایردیں گے کہ اس میں بہت کچھ خاص پر بھاؤ نہیں ہونے والا ہے۔ مجھے ڈر یہ ہے کہ شاید فوری طور پر اس کا اپر۹ فیصر ڈرگس پر

†Transliteration of Urdu Script.

نہیں ہوگا- لیکن اگلے سالوں کے اندراس کا اثر بڑے بھاری پیمانے پر ہم محسوس کریں گے اور دواؤں کے دام بڑھیں گے، خاص طور پر کینسر کی دواؤں کے دام پہلے ہی بہت زیادہ بڑھ گئے ہیں- میں منتری جی سے اس کے لئے ایشورینس چاہوں گا- کینسر جیسی بیماری اور جو ہمارے مینٹلی چیلنجڑ بچے ہیں ان کے لئے مسلسل ساری زنرگی انھیں دوائیں پڑتی ہیں، ساری زندگی انھیں دوایں چاہئے ہوتی ہیں، اور وہ دوائیں بہت مہنگی ہیں- آج اس میں ریسرچ ہو رہا ہے، دماغی بیماریوں کے بارے میں ہم پچھلے سالوں سے ریسرچ کرزہے ہیں اس کو سمجھ پارئے ہیں-اس میں دوائیں آرہی ان دواؤں کے اوپر جو پیٹنٹ ہوں گے ان کا بھاری اثر ہوگا، لیکن یہ ہمارے لوگوں تک نہیں پہنچ پائیں گے، اس میں آپ کیا کمٹمیرٹ دے سکتے ہیں؟ جیسا کہ کہا گیا کہ ایچ آئی وی ایڈس کی بارے میں یاٹی بی کی بارے دوحہ (ڈی ڈی اے) میں اس کا کمٹمینٹ ہوا تھا کہ اس کے دام نہیں بڑھیں گے- لیکن میں کہنا چاہوں گا کہ آج دنیا میں ہمارے یہاں کہ جو Pharmacuetical کمٹنیاں تھیں، ہماری جوڈر گس تھیں اس کے لئے ہمیں دنیا کی دعائیں مل رہی تھیں- پوری دونیا میں بھارت کو appriciate کیا جارہا تھا، خاص طور پر افریقہ اور ایشیا کے غریب دیشوں میں، لیکن آج کینیا،تنزانیہ، یوگانڑا میں بھارت کے خلاف مظاہرے ہورئے ہیے، بھارت کے خلاف لوگ سڑکوں پر آگئے،کیوں کہ انھیں یہ ڈر ہئے کہ اگر وہاں پر یہ آئیں اتنی مہنگی ملیں گی تو ان کی زندگی پر اس کا اثر پڑے گا- وہاں پر لوگ بہب فکر مند ہیں- دنیا بھر کے جو ہیلتھ ایڑووکیٹس ہیں وہ بھارت میں آکر ڈیمانسٹریشن کر رہے ہیں- ہم سے اپیل کر رہے ہیں،بھارت کے ممبرکے آف پارلیمنٹ سے اپیل کر رہے ہیں کہ وہ اس پر دھیان دیں اور اس اور موضوع کو اتنی آسانی سے اور اتنے ہلکے طریقے سے نہ لیں- لیکن مجھے دکھ یہ ہے کہ دیرلگائی گئی،انھوں نے لگائی یا انھوں لیکن آخر میں آکر راجیہ سبھا کے اندرمیرے جیسے لوگوں کو پڑھنے کا وقت بھی نہیں ملا۔صبح ہمارے پاس ۹۰۰-۸۳۰ بجے اسکی امینٹس آئیں، ہم اس کو پڑھ کر سمجھ لیتے،اتنا وقت نہیں تھا۔اس لئے میں اگر کنفیوژڈ ہوں تو اس لئے نہیں کہ میں سما جوادی پارٹی کا ممبر ہوں- میں اس لئے کنفیوژڈ ہوں کہ آپ سارے کنفیوژڈ ہیں، میں آپ سے کہنا چاہتا ہوں....مداخلت.... کہ آپ کو اس پر کو اس پر بہت زیادہ خوش ہونے کی ضرورت نہیں ہے-

`**उपसभाध्यक्ष (श्री संतोष बागड़ोदिया)**: सिद्दिकी साहब, आप इधर बोलिए, उधर मत बोलिए।

† **श्री शाहिद सिद्दिकी** : जो अपने कंफ्यूज़न को मान लेता है, वह सबसे कम कंफ्यूज्ड होता है। जो लोग दूसरों को कंफ्यूज्ड समझते हैं, हकीकत में वे ज्यादा कंफ्यूज्ड होते है । सर, यह जो ट्रिप्स के एग्रीमेंट की बात हो रही है, इसकी जो इनइक्वैलिटीज़ है, इसको हमारे देश के जो इकॉनोमिस्ट्स है, वे इकॉनोमिस्ट्स जो डब्ल्यूटीओ के सपोर्टर रहे हैं, वे इंटरनेशनल इकॉनोमिस्ट्स हैं, जगदीश भगवती, दानी रॉड्रिक, माइकल फिंगर जैसे लोग, इन्होंने इस बात को रिकॉग्नाइज़ किया है कि ट्रिप्स एग्रीमेंट में इनहेरेंट इनैक्वैलिटीज़ हैं । यह ट्रिप्स एग्रीमेंट कोई ऐसी बाइबल, कुरान या गीता नही है कि जिसे आप मापदण्ड बना कर कहें कि यह ट्रिप्स एग्रीमेंट में है, इसलिए हमें इसे मान्यता देनी है । ट्रिप्स एग्रीमेंट के ऊपर आज अंतर्राष्ट्रीय स्तर पर सवाल उठाए जा रहे है कि यह एग्रीमेंट अंतर्राष्ट्रीय स्तर पर हैल्थ के सेक्टर में, फॉर्मास्युटिकल के सेक्टर में इम्बैलेंस लाएगा, अराजकत लाएगा । गरीब आदमी के हित में यह नही होगा, इसलिए आज इस पर सवाल उठ रहे है । मैं चाहूंगा कि हमारे मंत्री जी, चाहे वह कॉमर्स मंत्री हैं, चाहे हमारे हैल्थ मिनिस्टर हैं, चाहे हमारे फाइनांस मिनिस्टर हैं, वे अंतर्राष्ट्रीय स्तर पर सवाल उठाएं और ट्रिप्स एग्रीमेंट को रिव्यू करने की बात होनी चाहिए । ट्रिप्स एग्रीमेंट के रिव्यू का जो प्रावधान है, वह खुद ट्रिप्स में ही मौजूद है । इसमें फ्लेक्सिबिलिटी हैं, उसमें रिव्यू होना चाहिए, क्योंकि उसका इम्पैक्ट हमारे ऊपर अच्छा नही होने वाला है । सर, यू0के0 में इंटैलेक्चुअल प्रॉपर्टी राइट्स का कमीशन बना है । सर, हम आज यह अपनी परेशानी नही बता रहे है, उस कमीशन ने भी इस बात पर परेशानी व्यक्त की है ।

شری شاہد صدیقی: جو اپنے کنفیوژن کو مان لیتا ہے،وہ سب سے کم کنفیوژڈ ہوتا ہے۔ جو لو گ دوسروں کو کنفیوژڈ سمجھتے ہیں،حقیقت میں وہ زیادہ کنفیوژڈ ہوتے ہیں۔ سر، یہ جو ٹریپس کے ایگریمینٹ کی بات ہورہی ہے،اس کی جو ان اکولٹیز ہي، اس کو ہمارے دیش کے جو WTO اکانومسٹس جو WTO کے حامی رۓ ہیں، وہ انٹر نیشنل اگانومسٹس ہیں، وہ اکانومسٹس جو کے حامی رۓ ہیں،وہ انٹر نیشنل اگانومسٹس ہیں، جگر یش بھگوتی، دانی راڈرک،مائیکل فنگرجیسے لوگ انہوں نے اس بات کو رکاگنائز کیا ہے کہ ٹرپس ایکریمینٹ ہیں انہیرینٹس ان اکولیٹزہیں۔ یہ ٹرپس ایگری مینٹ کوئ ایسی بائبل،قرآن یا گیتا نہیں ہے کہ جیسے آپ ماپ دنڈ بنا کر کہیں کہ یہ ٹرپس ایگریمینٹ میں ہے، اس لئے ہمیں اسے مانیتا دینی ہے۔ ٹرپس ایگریمینٹ کے اوپر آج بین الاقوامی سطح پر سوال اٹھائے جا رہے ہیں کہ یہ ایگریمینٹ بین الاقوامی سطح پر ہیلتھ کے سیکٹرمیں، فارماسیوٹکل میں، ڈسبیلینس لائےگا، اراجکتا لائےگا۔ غریب آدمی کے ہت میں یہ نہیں ہوگا،اس لئے آج اس سوال پر سوال اٹھ رہے ہیں۔ میں چاہوں گا کہ ہمارے منتری جی، چاہے وہ کامرس منتری ہیں،

†Transliteration of Urdu Script.

چاہے ہمارے ہیلتھ منسٹر ہیں، چاہے ہمارے فائننس منسٹر ہیں، وہ بین الاقومی سطح پر سوال اٹھائیں اور ٹرپس ایگریمینٹ کور یو یو کرنے کی بات ہونی چاہئے۔ ٹرپس ایگریمینٹس کے ریویو کا جو پراودھان ہے، وہ خود ٹرپس میں ہی موجود ہے۔ اس میں فلیک سبلٹی ہے، اس میں ریویو ہونا چاہئے، کیوں کہ اس کا امپیکٹ ہمارے اوپر اچھا نہیں ہونے والا ہے۔

سر، یوکے میں انٹےلیکچول پراپرٹی رائٹس کا کمیشن بنا ہے۔ سر، ہم آج یہ اپنی پریشانی نہیں بتارہے ہیں، اس کمیشن نے بھی اس بات پر پریشانی ظاہر کی ہے

उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) : अब आप समाप्त कीजिए ।

† **श्री शाहिद सिद्दिकी** : सर, मेरे तो अभी 5 मिनट भी नही हुए हैं ।

شری شاہد صدیقی: سر میرے تو ابھی5 مینٹ بھی نہیں ہوئے ہیں۔

उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) : ऐसा है, आप इधर – उधर देख रहे हैं और मैं घडी तरफ देख रहा हूं । आप दो मिनट और बोल लीजिए ।

†श्री शाहिद सिद्दिकी **:** सर, यू0के0 में इर्टेलेक्चुअल प्रॉपर्टी राइट्स का जो कमीशन है, उसने भी इस पर बहुत परेशानी व्यक्त की है कि इससे आने वाले वक्त में डवलपिंग कंट्रीज में मेडिसिंस के दाम बढ़ेगे और उससे आम लोगों को नुकसान पहुंचेगा । आज अंतर्राष्ट्रीय लेवल पर भी इस बात को महसूस किया जा रहा है । सर, माइक्रो आर्गनजिम्स, नॉन – बायोलॉजिकल और माइक्रो बॉयोलॉजिकल प्रोसेस के बारे में तो खुद डबल्यू0टी0ओ0 क्लिअर नही है और डबल्यू0टी0ओ0 में भी इस पर बहस हो रही हैं कि इस पर पेटेंटिंग होनी चाहिए या नही ? ऐसे में हमारे यहां इसकी पेटेंटिंग करना, मैं समझता हूं कि दुरुस्त नही होगा, ठीक नही होगा । इस पर हमें विचार करना चाहिए और हमें देखना चाहिए कि यह माइक्रो ऑर्गेनजिम्स और नॉन – बायोलॉजिकल प्रोसेस को अगर इसमें शामिल करना है तो यह हमारे हित और देश के हित में नही होगा ।

† **Transliteration of Urdu Script.**

شری شاہر صدیقی: یو کے میں انٹے لیکچول پراپرٹی رائٹس کا جو کمیشن ہے، اس نے بھی اس پر بہت پریشانی ظاہر کی ہے کہ اس سے آنے والے وقت میں ڈیولپنگ ممالک میں میڈیسن کے دام بڑھیں گے اور اس سے عام لوگوں کو نقصان پہچےگا۔ آج بین الاقومی سطح پر بھی اس بات کو محسوس کیا جارہا ہے۔ سر، مائیکروآرگانزم،نون بائیولو جکل اور مائیکروباجکل پروسر کے بارے میں تو خود OTW کلئیر نہیں ہے۔ اور OTW میں بھی اس پر بحث ہورہی ہے کہ اس پر پیٹنٹنگ ہونی چاہئے کہ نہیں؟ ایسے میں ہمارے یہاں اس کی پیٹنٹنگ کرنا، میں سمجھتا ہوں کہ درست نہیں ہوگا، ٹھیک نہیں ہوگا۔ اس پر ہمیں غور کرنا چاہئے اور ہمیں دیکھنا چاہئے کہ یہ مائیکرو آرگانزم اور نون بایئولوجکل پروسزکواگراس میں شامل کرنا ہے تو یہ ہمارے ہت اور ریش کے ہت میں نہیں ہوگا۔

उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) : अब समाप्त कीजिए, बहुत समय हो गया।

†**श्री शाहिद सिद्दिकी** : सर, इसमें जो फ्लैक्सिबिटीली दी है, उस फ्लैक्सिबिलिटी हमने फायदा नही उठाया है, हमने उसका प्रयोग नही किया है।

شری شاہر صریقی: سر، اس میں جو فلیک سبلٹی ری ہے، اس فلیک سبلٹی کا ہم نے فائدہ نہیں اٹھایا ہے۔ ہم نے اس کا پریوگ نہیں کیا ہے۔

उपसभाध्यक्ष (श्री संतोष बागड़ोदिया) : आपका समय हो गया, अब खत्म कीजिए।

†**श्री शाहिद सिद्दिकी** : सर, हम इसका विरोध तो नही करेंगे क्योंकि अंतर्राष्ट्रीय कमिटमेंट है। इसलिए हम इस अंतर्राष्ट्रीय कमिटमेंट के साथ चलते हुए और हमारे लेफ्ट के साथियों के साथ

†TranslKeration of Urdu Script.

चलते हुए इसे पास किए जाने के हक में हैं क्योंकि लेफ्ट के साथियों ने इसमें काफी हद तक परिवर्तन कराया है । हम उनके साथ चलेंगे, लेकिन एक बात उनसे भी कहेंगे कि आने वाले समय में आप सरकार को बाध्य कीजिए, सरकार को इसके लिए बांधिए कि इससे जो नुकसान होने वाला है उसको कैसे रोका जाए और इसमें जो कन्फ्यूजन है, इसको आप दूर करेंगे । मैं इसकी अपील करता हूं ।

شری شاہد صدیقی: سر، ہم اس کا ورودھ تو نہیں کریں گے کیوں کے بین الاقومی کمٹمینٹ ہے۔ اس لئے ہم اس بین الاقومی کمٹمینٹ کے ساتھ چلتے ہوئے اور ہمارے لفٹ کے ساتھیوں کے ساتھ چلتے ہوئے اسے پاس کئے جانے کے حق میں ہیں، کیوں کہ لفٹ کے ساتھیوں نے اس میں کافی حد تک بدلاؤ کرایا ہے۔ ہم ان کے ساتھ چلیں گئے، لیکن ایک بات ان سے بھی کہیں گے کہ آنے والے وقت میں آپ سرکار کو بادّھ کیجئے، سرکار کو اس کے لئے باندھئے کہ اس سے جو نقصان ہونے والا ہے اس کو کیسے روکا جائے اور اس میں جو کنفیوژن ہے اس کو آپ دور کریں گے۔ میں اس کی اپیل کرتا ہوں۔

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Mr. Jothi, you have eleven minutes.

SHRI N. JOTHI: Mr. Vice Chairman, Sir, as everyone has got a licence, let met also have one.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Nobody got more time, so, don't worry. *(Interruptions)* Goahead, start your speech.

SHRI N. JOTHI: Sir, on behalf of the A ,DMK Party, I oppose this Bill for the following reasons. *(Interruptions)* No; we oppose it. Sir, the earlier Patent Act 1970 was a culmination of deliberations of several years by a committee headed by Justice Rajagopala Iyengar, a retired Supreoart Court

† transliteration of Urdu Script.

Judge, and the Act came into fore. It has got about 162 sections. They are well-laid, well-considered sections and nobody found any fault with it. Now, Sir, on 18th March, 2005, a Bill was circulated by your Office containing 57 pages. Within a few hours later, I was circulated with another Bill containing only 18 pages.

Sir, an Act which has got 162 sections and in which 75 amendments are to be brought in, cannot be discussed in this manner. Already people are making a lot of criticism against us. People are talking about it. Many lawyers are asking me: "Are deliberations going on about any Act?" When the CVC amendments were drastically brought out, questions were sought and cases were filed. We must be very serious. Chairman has again said that it is a serious matter, so, the discussion should be serious. Is the Government serious in bringing this matter in this way? Is it not a* for this House to rush through this Bill in this manner?

It is not only a* to the Members, but it is an affront to the whole public, whole nation. I am very sorry. If you could sleep over this like Rip Van Winkle you can't wake up one day and suddenly rush through. I am sorry you can't ride on us like this. My protest against the Treasury Benches is, you should have brought it earlier. Don't rush through like this, and make us to explain to the public, "what can I do?" We are in opposition, what can I do?" Don't make me to give an explanation like this. I am entitled to say this, Sir.* I don't mind calling a spade a spade. Sir, 75 amendments are sought to be brought in this main Patent Act. It is a*...

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Excuse me, the word* is unparliamentary. That will not go on record. And please don't make any insinuations against the Chairman. That will also not go on record. Doesn't matter. I am following the rules.

SHRI N.JOTHI: All right, Sir.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): And, I am warning you, 'please don't do that', It is not in good traditions.

SHRI N. JOTHI: Okay. Anyway, Sir, you expunge it. All my feelings will be expunged. Sir, 162 sections are sought to be *by 75 amendments. Instead of doing that, they could have, very well, repealed the old Act, framed a new Act, and could have brought in. When we read the parent Act, side by side, we read the one you circulated earlier, and circulated later, we forget the main spirit itself. Sir, this is not the way of bringing an enactment. I am very sorry, My protest is against the procedure being

*Expunged as ordered by the Chair.

followed. I am opposing the procedure being followed. This is number one. Coming to the minutes of the matter, time and again, I have been hearing in this House, it is also said in the Objects and Reasons, that due to WTO compulsions, due to certain countries leading us, due to certain countries compelling us, we have brought this Act. Have you bartered our sovereignty to any country? Have we sold ourselves to anybody, Sir? I am very sorry, 'yes', I am not happy with both sides. ...**(Interruptions)*... Sir, I want bright brothers. Sir, this is not the way in which our sovereignty should be surrendered to anybody, including WTO. What do we gain out of it? What are we trying to achieve through this enactment? Research should be made on medicines and pharmaceutical items. Medicines should be invented day in and day out. Several diseases will be cured, and our people will be very hale and healthy. This is what is sought to be stated in this enactment. What medicine we need for which disease? What are we lacking? What is going to come out of this Act, except satisfying certain quarters in WTO? Are we now adopting an economic colonialism of other countries? Are we succumbing ourselves to the colonialism of other countries? Are we succumbing ourselves to their doctrine and dictation on sovereign matters? Sir, my second protest is against surrendering our sovereign power to foreign countries, which I hate Sir. I don't approve on that. Now, I come to the real spirit of this Act. In 70's and 80's when Shrimati Indira Gandhi was ruling in this country, we heard quite often about monopoly being restricted, monopoly being abolished. We cannot allow a single individual to monopolies everything. What is this enactment? We are going to legalise the monopoly. We are going to recognise the monopoly, Monopoly is going to be legally recognised hereafter He will rule the price... *(Interruptions)*... Already evasive answers nave started coming from Treasury Benches. I heard Shri Jairam Ramesh's claim. This Act is only a Patent Act This will indicate only laboratories inventing new medicines, and patents not being given. Regarding price control, there is a separate Act. There is a separate Ministry that will take care of it. Already, we have seen how the successive Governments have taken care of controlling the cement price, controlling the steel price. What is the cement price now? If cement manufacturers join together, they can sell it at any rate. If Steel manufactures join together, they can sell it at any rate. Sir, this is happening. Are we effective on these matters? Today, we discuss and we exchange views. Some of my views can be expunged and the hon. Chairman can control me. Thereafter we forget about it. It becomes an Act by the Gazette Notification and goes to the bureaucrats. What do the bureaucrats do thereafter? My friend from the Left said that we would have

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*Expunged as ordered by the Chair.

a consensus, not now, but let the Act get passed. We have taken note of whatever you have said. Tell them to us and we will say it to them. What is this, Sir? Why should we bother to tell the problems to them and ask them to tell them further? We don't want any barters in between.

Sir, the nation is watching us. Yesterday, we discussed suicide by farmers. We have been shedding tears on that issue. No legislation is coming forward for them. Seventy-five per cent of the people are living in rural areas; nobody is coming forward for them. Argentina does not like us. Brazil is blaming us. So, bring in this legislation quickly and pass it before 4.30 P.M.! Sir, I am very sorry to say, this can't be done. If coat and tie alone could rule this country, I, being an ordinary *dhotiwala,* I feel like a fish out of water *...(Interruptions)...* By heart, I would always remain a *dhotiwala,* Sir *...(Interruptions)...*

Sir, as for price escalation, they say assurances are there. Plenty! Take it! If you want assurances, they are available, take them! Let us not go far back in time. The magazine, *Frontline,* a responsible one from Madras, Chennai, dated 25.02.2005—it is a very recent issue, still available on the stands—has given a tabulation. I don't wish to read it out, otherwise my time would run out. It has given a tabulation of more than fifteen items of drugs under various headings, such as anti-viral, anti-fungal, anti-cancer, etc. *(Time-bell)* It has been given that 20 times more than the drugs available in India is being sold in Pakistan, 30 times more than what is available in India is being sold in Indonesia, and so on. Sir, if that is going to happen, genocide will begin. Really, Sir, it is a warning to us. I am a very poor person, but I can visualise that people will be on the streets.

Sir, we are a socialist, democratic country. Please, do not forget our Preamble. We are a socialist, sovereign country, and also secular. Yes, I am for secularism, I am from a Dravidian party. I say that there is no God. God is the innovation of man. It is our view that there is no God at all *...(Interruptions)...*

श्री राजीव शुक्ल (**उत्तर प्रदेश**) : शंकराचार्य जी के बारे में बोलिए **...(व्यवधान)...** क्या विचार हैं? **...(व्यवधान)...**

उपसभाध्यक्ष (**श्री संतोष बागड़ोदिया**) :शुक्ल जी, आप बैठ जाइए । **...(व्यवधान)...**

SHRI N. JOTHI: Not Shankaracharya. He is a* That is why *...(Interruptions)... (Time-bell)...* Sir, I started making my speech when you came to the Chair. I respect you, Sir.....*(Interruptions)...*

*Expunged as ordered by the Chair.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): No cross-talks, please. No cross-talks, please...*(Interruptions)...*

SHRI SU. THIRUNAVUKKARASAR (Madhya Pradesh). Sir, he said* It should be expunged, Sir...*(Interruptions)...*

SHRI YASHWANT SINHA: Sir, he used the word* It should not be mentioned in the records...*(Interruptions)...*

उपसभाध्यक्ष (**श्री संतोष बागड़ोदिया**) : आप सब एक साथ बोलेंगे, तो कैसे समझ में आएगा?

SHRI YASHWANT SINHA: Sir, I am making a point that reference to a person who is not present in the House should be deleted because this is against... *(Interruptions)...*

SHRI N. JOTHI: I wish to say, the murder-accused...*(Interruptions)...*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Nothing unparliamentary will go on record...*(Interruptions)...* anything unparliamentary will not go on record ..... *(Interruptions)...* Even the word* has been used. Even that won't go on record. But now, you have to finish your speech...*(Interruptions)...*

SHRI N. JOTHI: Sir, I would take two more minutes ..... *(Interruptions)...*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): You have already taken more time than was allotted to you. This should be the last point that you would be making. And you will be given one minute.

SHRI N. JOTHI: Sir, I would take two minutes. ...*(Interrruptions)...* During natural calamities like the Tsunami, there is an outbreak of diseases. There are problems in drug availability; there is the problem of patent holders. Now, how do you intend to make cheap drugs available to poor people? Mr. Jairam Ramesh says that we would import drugs. When, Sir? After the people have reached their graveyards? What is this? Are we not living in practical world? Is it carrying the most important work? What is the great urgency for this Patent Act? We do not understand. I cannot understand the Act. I cannot understand the urgency of it. I cannot also understand the procedure that you are adopting. I am sorry. You do not understand my worry.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): You have to finish now.

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*Expunged as ordered by the Chair.

SHRI N. JOTHI: Now, Sir, I finally say that I am a little bit disappointed with our Left friend whom we always like and respect. Whatever mandate they have got from the people, they have thrown it away, and we have taken it now in this cause. We are taking that mandate. We are for the poor people. On behalf of the poor people of this country and on behalf of the majority people of this country, we oppose this Bill.

SHRIMATI VANGA GEETHA(Andhra Pradesh): Thank you, Sir. On my behalf and on behalf of my Party, I rise to oppose this Bill. Sir, this Patents (Amendment) Bill is one of the most important legislations because..... *(Interruptions)...*

DR. ALLADI P. RAJKUMAR (Andhra Pradesh): You assured about the drugs ..... *(Interruptions)...* So far as prices are not reduced. *...(Interruptions)...*

उपसभाध्यक्ष (**श्री संतोष बागड़ोदिया**) **:** सुनिए बैठ जाइए । **...(व्यवधान)...** सुनिए डा0 अलादी राजकुमार जी **...(व्यवधान)...** राजकुमार जी, राजकुमार जी, प्लीज सिट डाउन । **...(व्यवधान)...** यह महिला बहुत स्ट्रांग है, हमारी कमेटी में है, इसे आपकी प्रोटेक्शन नही चाहिए । **...(व्यवधान)...** राजीव जी, प्लीज । आपका नम्बर देरी से आएगा।

DR. ALLADI P. RAJKUMAR: You send it to the Select Committee. We are agreed for the Select Committee.

SHRIMATI VANGA GEETHA: ... it directly concerns a large number of people in India. There were certain apprehensions in the minds of the people regarding this Bill. Sir, the Government says the prices of many drugs will not increase after enforcing the Patents Bill. The Government also says that adequate safeguards have been provided in it to protect the interests of the Indian pharma industry. But I do not know, how prices of drugs should not increase after the enforcement of this legislation. The Government should take steps to control the drug prices in order to mitigate the sufferings of a large number of people. Sir, the purpose of the Bill is not only to make the law TRIPS compliant but also to simplify and rationalise the procedure for grant of patents. Prior to this, two Amendments have already been carried out in Patents Act in the year 1999 and 2002. This particular amendment has critical implications on crucial sector, that is, Pharmaceutical industry. Pharmaceutical industry of India is one of the becoming industries. India is the fourth largest pharmaceutical industry in terms of volume with exports reaching to almost 200 countries in the world. Till 1st January, 2005, the Patent Act, 1970, did not provide "Product Patent" protection for medicines and food. It provides only "Process Patent'

protection. This very fact is the main cause for tremendous growth in the Pharmaceutical industry. It allowed Indian companies in partnership with CSIR laboratories to innovate drug processes through reserve engineering that were under patent in the global market. Indian companies were able to market generic drugs within two to four years of their introduction in the global market instead of waiting 10 to 15 years or more, that too at 1 /10th or 1/14th of the cost of the patented medicine. But now the "Process Patent" regime has ended with the coming into force of the new law. In effect, Indian companies now are totally prohibited from using cheaper methods to produce the same drugs, as the end product, regardless of the process. The new law, which has been brought by the Government, will prohibit manufacturer from making, using, offering for sale or importing patented product without paying a patent fee to the patent holding companies. This will amount to huge fee that patients in India will now have to pay for in the form of higher costs of medicines. India, which had always taken pride in providing economical health care to the people, will now be competing with medicine prices of the kind prevalent in the developed world, including the U.S., Canada, the U.K. arid Japan. For example, Indian companies offer their cocktail of drugs used to treat HIV/ AIDS at $ 140 per annum as compared to $ 8,000 to 10,000 charged by the multi-national companies. The generic version of Olewec, a medicine for cancer, was otherwise, available to chronic myeloid leukemia (a life-treating form of cancer) patients at Rs. 9,000 to Rs. 12,000 per annum. It will now cost over Rs. 1 lakh and above. I would like to draw the attention of the hon. Minister towards the news item regarding the impact of price rise of the life-saving drugs. According to this, the price of life-saving drugs will go up by, at least, ten to twenty times. According to this, the Bill will soon raise the prices of medicines in India to the American level. Similarly, anti-ulcer medicine cost Rs. 74 a packet in Pakistan as against Rs. 5 in India. Faced with this difficulty, some of us have urged the Government against amending the Law to switch over to product patent. But, it appears that the Government does not have any political will to do so and was in" such a hurry that they actually issued an Ordinance for the purpose. The hon. Minister of Commerce and Industry has gone on record to claim, and I quote, "The fear that prices of medicines will spiral is unfounded. In the first place, we must realise the fact that 97 per cent of all drugs manufactured in India are off-patent and so will remain unaffected". It is surprising that the Government gave this figure of 97 per cent in 1995 and now, after ten years, it is citing the same statistics. Even this figure of 97 per cent is half-truth. While it is true that most drugs will not be affected,

the basis of 97 per cent figure is a mystery. Independent estimates show that drugs affected in the short-term have turnover of arouhd Rs. 3,000 crores. This is just an indication. The rate at which old drugs turn obsolete has increased tremendously.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Geethaji, you have to finish now.

SHRIMATI VANGA GEETHA: Sir, I will take just two or three minutes.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Two, three minutes more! Because of him, you have two minutes extra. Please finish within one minute.

SHRIMATI VANGA GEETHA: This is especially true in the case of drugs to treat infections, killer diseases like tuberculosis, malaria, pneumonia and now HIV/AIDS. So, the issue is not just drugs that are off-patent today, the more important concern is that new drugs required to replace the Ineffective drugs will now be patented, and thus become unaffordable. The point relating to compulsory licensing needs to be mentioned. The procedure provided for licensing is cumbersome and needs to be simplified. The present procedure for issue of compulsory licenses for commercial purpose is unduly elaborate and very time-consuming and defeats the very purpose of compulsory licensing for urgently-received drugs. Therefore, it needs to be changed. India has become the world supplier of cheap AIDS drugs because it has the necessary new material and thriving and sophisticated copy-cat drug industry made possibly by laws that grant patents to the process of making medicine rather than to drug themselves. The new amendment will efficiently end the copy-cat industry for newer drugs. Representatives of both the developed and developing world are knocking at the doors of our country in a bid to enable the patent law favourable to their countries. Lastly, I want to say that with so many dangers looming on the public healthy horizon, the Government should not act in haste. Many countries like the U.K., France and Argentina delayed making amendments in their laws to conform to the TRIPS Agreement by many years without inviting any penalty. It is also required that we should take advantage of whatever exemptions are available in the TRIPS Agreement and ensure safeguards for the public health. Before I conclude, I want to say that Alexander Fleming, who discovered Penicillin, did not patent it in the hope that this would develop the product as a cheap and effective drug. Inventors like Fleming are hard to find in today's materialistic world. Therefore, we have to be cautious in our approach.

This Patent Act, 1970 is a model Act, not only for us but also for all the developing countries in the world. In my opinion, it is not that the people of our country are going to be benefited at large. Therefore, I request and demand that this Bill should be referred to the Select Committee for verification and modification wherever changes are needed.

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): Shri Kapil Sibalji, you have twenty minutes.

THE MINISTER OF STATE OF THE MINISTRY OF SCIENCE AND TECHNOLOGY AND THE MINISTER OF STATE OF THE DEPARTMENT OF OCEAN DEVELOPMENT (SHRI KAPIL SIBAL): Mr. Vice-Chairman, Sir, I am indeed grateful to be allowed to participate in this very erudite debate, and, I have to say that I find it a great pleasure to participate in this particular House because of the high level of the debate that has taken place thus far.

Sir, I just would like to take off from what the hon. Member Yashwantji said at the time when he started. He said that at the time when the original Bill was presented or was about to be presented by the previous Government, they were not the last words in wisdom then. The import of this statement was, as you know, that people become wiser, as time goes by. I just want to tell him that they perhaps were not the last words in wisdom then, and, I would like to add that they are certainly not the last words of wisdom now.

We are also not the repositories of wisdom. We don't claim to be. But we certainly believe in consistency of thought and deed, and, our support or opposition to any piece of legislation is essentially principled. Our position does not change depending on where we sit. In 1999, our position was the same though we have since then changed places. He also said that heavens are not going to fall if we take another few weeks, perhaps another few months to pass this Bill, and, I entirely agree with him. Heavens will certainly not fall, but our prestige will, and, our international credibility will. Sir, I dare say, standing here, that I would not allow India's credibility to fall merely because my hon. friend Shri Yashwantji says that heavens will not fall. He said that, outside the House somebody told him that NDA has been 'out-manoeuvred'. The fact of the matter is that the NDA has been 'out' since May, 2004 and 'manoeuvred' today, and, that future generations will know, from the records of this House, what unprincipled positions, particular parties took merely because they changed places.

Mr. Vice Chairman, Sir, I look at this entire controversy in another context altogether. Let me place that before you today. The reason why most of us are very emotive about this Bill is because it impacts on the future of health care in this country, it impacts on the future perhaps of the agricultural community in this country, because of agro-chemicals and food stuffs, and, because of the diseases that most of our common people suffer from. If you look at it from this context, you will find that India - am giving 2001 figures - had almost 19,71,580 cases of malaria. We have about 5.1 million people who suffer from HIV and AIDS. We have a huge population, which suffers from tuberculosis. We are finding it very difficult to cope with the growing fear that we would be overtaken by these kinds of diseases. The fact of the matter is that anti-biotics synthetic drugs are not as effective, on human body as they used to be at one time, because human system is getting immune to them. I might remind you, Sir, that for these three diseases, which afflict the population in India, to a very large extent, the real research that is being done in the world is in India. The fact of the matter is that multinationals are not doing any R&D on malaria, because they know even if they produce the drug after investing 1.7 billion dollars, they would not be able to sell it in India, because people in India do not have the means to purchase these drugs. The multinationals of the world are not investing money for the cure of tuberculosis for the same reason; and the multi-nationals in the world are not investing money for the cure of HIV for the same reason. The burdensome diseases are prevalent in the less developed world and solutions for those diseases have to found by the less developed world. The intellectual property generated in this process must be protected. It is not selling ourselves to the West; it is, in fact, protecting ourselves from the West. Shri Jairam Ramesh rightly pointed out, after January 1,2005,97 per cent of the existing drugs under products patent will not have such protection. The life of the patent would be over. It is a very small percentage. Now, let me tell you, Sir, what are the advances that are taking place and that is on account of 1970 Act. I am very delighted today that after several years a very senior Member of the BJP has lauded what the Congress Party did in 1970, after their national leaders proclaim to the world that the Congress Party did nothing for 45 years. And it is on record. As debates in these Houses will be conducted think, the BJP will slowly realise how we laid the foundations of India for India to take off into the 21st Century. *(Interruptions)* He may say *ha* now, but he himself said on the floor of the House that it was a most well-considered Bill} it was one of the most wonderful things that happened. *(Interruptions)* I am not yielding: *(Interruptions)*

SHRI YASHWANT SINHA: Will you yield for a minute? *(Interruptions)*

SHRI KAPIL SIBAL: I am not yielding. *(Interruptions)*

SHRI YASHWANT SINHA: Now, you have become a Minister. Please, yield for a while. *(Interruptions)*

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA: No, Please, don't disturb. *(Interruptions)* This is not your time. *(Interruptions)* You have spoken. *(Interruptions)* It is not unparliamentary. *(Interruptions)* Let him speak. *(Interruptions)* You should not interrupt like this. *(Interruptions)* Please, go ahead, Mr. Sibal. *(Interruptions)*

SHRI YASHWANT SINHA: Sir, this is the whole problem. *(Interruptions)*

SHRI KAPIL SIBAL: Sir, I am making these points in the context of what the former Director-General of the WTO, Mr. Mike Moore, said on the 22nd June 2001. I quote here, he said, "The crisis of disease facing developing countries is dire. Every year malaria, tuberculosis, HIV/AIDS kill around six million people, almost all of the in the developing world." And, he was not talking of the West; he was talking about us, of the less developed world. "As I have said before, these premature deaths are a reproach to us all. They are also a huge blow to countries' hopes for development. Urgently, more needs to be done to save the lives of the millions of poor people. The WTO's TRIPS Agreement plays a vital role in tackling these problems. It strikes a carefully-negotiated balance between providing intellectual property protection - which is essential if new medicines and treatments are to be developed - and allowing countries the flexibility to ensure that treatments reach the world's poorest and most vulnerable people." The result of this is that it is we, who manufacture E-mail in this country, which protects us from malaria. It is we, who manufacture the Hepatitis-B vaccine for Rs. 20, which, at one time, was imported by us at a price of Rs. 708. It is our intellectual property. So, this is an opportunity. The WTO today in this context is a great opportunity for us to be able to discover new molecules. I will give you an example. Just the other day, the CSIR in collaboration with Lupin discovered a new molecule in tuberculosis called SUDOTERB. A new molecule for curing tuberculosis has not been discovered for 43 years. But CSIR and Lupin discovered it and today after going through animal trials successfully we are into human trials. I dare say this is going to be successful and the treatment of tuberculosis is going to be reduced from a long treatment of four to five months to a two months regime. This is going to help the poor.

And who is helping the poor? It is India because we are the hub of the knowledge economy, we are the hub of the intellectual property that is going to be generated in the 21st century. Let me give you, Sir, another perspective which is very important. I am not so much concerned with the provisions of the Bill, but I would like to give you the international perspective as to why it is a great opportunity for India. Sir, what's happening in the West today? Let me give you an example of the United States. What's happening in the United States today is that for every new drug to be manufactured, the investment required is not less than one billion dollar, 1.5 or 1.7 billion dollars. Now, when that kind of investment is required for developing a drug and 60 per cent of that investment is for clinical trials, the balance is for the drug, it is impossible for the multinationals to sell the drug at a cheap price. Consequentially, the drugs that are being developed in the West, even the middle class in America cannot affort to buy them. That is why you must have read about the controversy that Americans wish to import their drugs from Canada. This is the reason. In fact, Americans will have to change their definition of'poverty" because American companies cannot afford to sell their drugs to the American middle class. Sir, what is the result? The result is proliferation of collaborations with India. I will give you a small example of Biocon. Biocon in Karnataka is collaborating with multinationals for drug development and drug production with arbitrage value. In other words, they share the intellectual property. Since the American companies and multinationals cannot afford to carry on research in the United States, research has to be transferred to the less developed world. And which better place in the less developed world to do research than India because India has the human resource and a low-cost economy. I went recently along with Shri Kamal Nath, the Minister, to Davos and we had a meeting in the context of health care with all the CEOs of the Pharma multinationals. At the end of the meeting, and the Minister will bear me out, one of the CEOs got up and said that India will be the number one power in the pharmaceutical sector in the 21 st century. How? Because of product patents and by taking advantage of the opportunity

that is now available to us. Therefore .....(*Interruptions)...* You are right, you may have gone wrong in your wisdom, you may have gone stray on the road, but it is still time to come back. You must realise that wisdom should prevail ultimately? Please think of the national interests. Don't tell the people of this country of a divided polity, otherwise history will not spare you. So, what is happening today, that's the point that I was making, that drug development is taking place in this country. Let me give you another set of figures.

5.00 P.M.

[MR. DEPUTY CHAIRMAN, in the Chair]

Sir, what is happening in this country is very interesting. Sir, there are about 200 industries in the bio-tech sector and the annual turnover in 2001 was something like 705 million dollars. Now, it's more than one billion dollar and most of this in the field of bio-pharma and bio-informatics. Now, what's happening is that 20 top industries in this area are contributing something like four to six per cent of their sales' turnover towards R&D. Some companies like Shanta Biotech in Andhra is contributing something like 18 to 24 per cent towards R&D.

So, the Indian Pharma sector is investing a huge amount in R&D, to be able to discover those molecules for manufacture of drugs, so that they can be exported to the rest of the world. That can only be done if we seek the protection of the product patents. So, any posture taken by any political party—and I am not naming any—to go against the grain of what the Indian Pharma sector wants, is certainly not acting in the best interests of the country, and taking positions, that are entirely political. I have got facts and figures to support what I have said, and I am not going to waste the time of this House to show that. Not only that, I wish to remind my learned friend how, in fact, Vajpayeeji, when addressing the Indian National Science. Congress a couple of years ago, said that we are going to function in the knowledge economy. We must take advantage of the situation. We cannot let things go by. We must be a part of this global process. He belongs to your party, and he said that. So, the point that I am making is that, this is an opportunity for us. Please do not let it go. The other thing that I want to mention is that recently, there was an article, and also a statement in the newspapers by an authority in the United States, which said that they are very concerned that India and China will be the leaders in this area in the years to come, and that the number of students going to the United States, is declining down. They were very concerned about this. Most of the valuable human resource, which is the genesis of drug development in the United States, is from South Asia, and all the South Asians, the young students, who are in their twenties or thirties, are coming back to India, and I met many of them myself. They say: "No, we have a wonderful work environment. We have world-class facilities. We can produce the durgs, and match the world, and till now, we have been denied this opportunity." So, I think, it is important for all of us not to take sectarian positions, and think of the national interest. Sir, I want to mention another

thing, which Shri Jairam Ramesh also mentioned, please focus in the CSIR. In 1994, the CSIR filed five patents. Today, it has filed more than 200 patents in the United*States. So, let me give just one figure. So far as the total number of patents that have been granted in the United States is concerned, India is at number one. I have got the figures here. In so far as the health biotechnology patents issued by the U.S. in 2003 are concerned, India was at number one, South Korea was at number two, China was at number three, Brazil was at number four and Cuba was at number five. Then, in respect of the number of health biotechnology papers published, South Korea was at number one, China was at number two and India was at number three. So, we are number three in publishing papers, and we are at number one in filing patents, and you say that we should not pass -the Patents Bill. I don't see any logic behind your objections. This is not just in the health sector. If I start telling you about the wonderful things that are happening in this country in the agriculture biotechnology sector, I am sure, the TDP, which supports the ordinary agriculturists in Andhra Pradesh, will not oppose this Bill, because in the agricultural sector, through biogenetics, we are discovering new seeds, which are patentable, which are drought-resistance, which are pest-resistance, and which have high nutritional value like potato. We are discovering a new kind of potato, with a high vitamin A value. We are discovering tomatoes which will have a shelf life of eight to ten weeks so that the farmers do not suffer. Then, soyabean, corn, any number of commodities. Now, when we have these great opportunities before us, and when the world is looking to us, you say, we should show our back to the world. Then there is another very interesting thing, and that was seen in the *The Hindu* which was published the day before yesterday. *...(Interruptions)...*

SHRI S.S. AHLUWALIA: Sir, he accepts that India is very shining.

SHRI KAPIL SIBAL: I accept that India will shine in the future, but not if you turn your back today! India will shine in the future, and under our authority, it will shine much more than ever before. *...(Interruptions)...*

श्री रुद्रनारायण पाणि : बिहार में क्या हुआ **…(व्यवधान)…** बिहार में जो shining है, वह कहां गई **…(व्यवधान)…**

MR. DEPUTY CHAIRMAN: Please sit down. *...(Interruptions)...*

SHRI S.S. AHLUWALIA: The credit of 2003 also goes to you. *...(Interruptions)...*

श्री रुद्रनारायण पाणि : झारखंड में क्या हुआ? झारखंड में क्या shine कर रहा है **...(व्यवधान)...**

DR. ALLADI P. RAJKUMAR: Seventy-four per cent people are below the poverty line. They do not have drinking water. They do not have. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Mr. Rajkumar, please sit down. *...(Interruptions)...*

SHRI KAPIL SIBAL: Please have a sense of humour. *...(Interruptions)...* Please have a sense of humour. *...(Interruptions)...*

Sir, another thing is, there are two very important journals published in India in relation to traditional medicine. Now, the WHO has issued instructions to all patent authorities that those two magazines must be taken into account before awarding any patent anywhere in the world. This is the value of Indian science based on the Siddha form of medicines, the Ayurveda form of medicine and the bio-diversity in the country. We have two per cent of the total arable land of the world, but eight per cent of its bio-diversity! Of the 25 hotspots of bio-diversity, two are in India! There is a great wealth that is available for us for patenting and for manufacture of products which will be available for protection.

Sir, my learned friend talked about prices. Yes, I dare say, no Government, neither BJP nor will be able to say that tomorrow, the prices of commodities will be this or that. It will be an untruth if I were to say that. But we have to work within a world regime now. We have to work within a regime when we know that for the ordinary diseases in our country we can control prices. Sir, do you know that the UNICEF is buying insulin from us at a much higher price, but we sell insulin to our people at a much lower price? The world is moving towards a new paradigm called 'differential prices'. The meaning of 'differential prices' is that I will sell my product at one price to you, but at another price to my own people. And all over the world, people are moving in this direction. If a foreign company collaborates with India and we manufacture a drug, that drug may be sold in India at one price, but it will be sold in America at another price because the world over, the business communities, the pharmaceutical companies are realising...

SHRI S.S. AHLUWALIA: Let him explain that *....(Interruptions)...*

SHRI KAPIL SIBAL: I am not yielding. *...(Interruptions)...* Mr.Ahluwalia,

I am not here to explain anything ...*(Interruptions)*... I am not here to explain anything. ...*(Interruptions)*... ,

MR. DEPUTY CHAIRMAN: Mr. Ahluwalia, he is not yielding. ...*(Interruptions)*...

SHRI S.S. AHLUWALIA: Sir, Sweden has banned the insulin. Let him tell us whether it is a synthetic insulin or an animal-based insulin. ...*(Interruptions)*,..They have banned it; that is why they are not purchasing it from India. ...*(Interruptions)*... They have banned it. ...*(Interruptions)*...

श्री राजीव शुक्ल : सर, अहलुवालिया जी के हर चीज पर विचार हैं **…(व्यवधान)…**

श्रीमती सुषमा स्वराज : अहलुवालिया जी के पास नॉलेज का पेटेंट है ।

SHRI S.S. AHLUWALIA: That is the reason why you must give it a full thought. ...*(Interruptions)*...

SHRI KAPIL SIBAL: I will give you an example, Sir. ...*(Interruptions)*... And these are facts which nobody can dispute. Take for example a polio vial. A vial means about 20 doses of polio; it is sold in India at Rs.75/- per vial, but it is sold by us, by our companies, to UNICEF at Rs.95/- a vial. Why? Because the world community realises that people in India cannot buy this medicine at that price. So, there is nothing to worry about. I am purposely not dealing with specific clauses of the Patent Act because the Minister is going to answer the debate. So, I do not want to deal with that issue. But the fact of the matter is that this is an opportunity in our lap; please seize it; please seize the moment. Have an understanding of history, have an understanding of what the vision of India is, have an understanding of where India should go in 2025, and in that context, be wise and take your decision accordingly. Thank you very much, Sir.

SHRI S.S. AHLUWALIA: A good lecture on CSIR, not on patents!

MR. DEPUTY CHAIRMAN: Mr. Fali S. Nariman.

SHRI FALI S. NARIMAN (Nominated): Thank you very much, Hon. Deputy Chairman. I know the rule, Hon. Deputy Chairman, that the nominated Members must have their say in a capsule form, and I do not complain to you. The other day, I read a very fine little couplet of Rabindra Nath Tagore, which, I think, I keep in my pocket every time I wish to speak. It says: "The butterfly has not months but moments. And yet, it has time too enough!" So, our Nominated Members have not minutes, but moments. But they have time enough. Patent is an exception to the general rule that

information should form part of the public domain. We have come a long .way, since one of the greatest American Presidents, Thomas Jefferson, characterised patent as an embarrassment. Lack of patent laws, he said, in other countries did not appear to reduce the comparative ability to innovate. But we live not in an ideal world, but in a TRIPS compliant world.

Let me make a few points in a capsule form. First, this is one of the most important laws that we are debating in this session and I entirely agree with my hon. friend, Mr. Yashwant Sinha, that this an extraordinary important measure and has to be debated. Whether for good reason or bad reason, there was no time to debate or we don't have the courtesy of everybody concerned or the consensus of everybody concerned. It is very, very unfortunate, as far as I can see. I am going to say that we welcome Mr. Kapil Sibal with a pat again because it is very good that we have heard him after a very long time. His absence is always felt in this House. Then I found that he could not mend his ways because "boys will be boys and politicians will be politicians".

Secondly, I support the Bill. But I have some fears about the implementation and that is why I wish to make a small contribution. We are having, for the first time, the product patent protection for drugs and chemicals to make ourselves article 27 of the TRIPS Agreement compliant. But please realise, hon. Minister, that we are going to have far too many applications, far more, excessive, oppositions, more actions for infringements, more litigations, more multinationals bringing more lawyers and more disputations. So, when we are enacting this efficient law, we must have TRIPS efficient set of legal compliance. It is very important. It is unfortunate that we had in this Act, the controller, who is the Controller of Patents, Trade Marks and Designs. The office was originally in Calcutta because in 1911 because when the first Patent Act was passed the capital was Calcutta. Now, we must now come out of our shell. Patent is one of the most important measures for the modern technological world. I remember, when I was in Geneva a few months ago, Mr. Rubens Recupero, who was the Secretary-General of UNCTAD, mentioned a fact that when he was the Foreign Minister of Brazil, he found, in contrast to what he saw in Washington in the United States, next to the Pentagon Building, a huge, monstrous building, almost equal to it, housing the people who are doing WTO work in the US. When he went back to Brazil, he said, "We have only one-and-a-half people". One of them was he himself, and half was some other person who worked for half the time. Once we are TRIPS compliant, etc., we should be TRIPS efficient as well. Therefore,

implementation is the most important ingredient of this law. I urge upon the hon. Minister to form an Implementation Committee of his own choice. It makes no difference who they are. But they have to be experts because we are now having an Appellate Board. For instance, in the 2002 amendment, Appellate Board for the Trade Marks was made The Appellate Board for patents. We should have a new Appellate Board and we should provide for appeals to the Supreme Court. This is one of the few enactments that we had passed in the last two sessions which doesn't have an appeal from Appellate Board to the Supreme Court and the reason why no appeal to the Supreme Court should be there is not because only I practice there. That sort of a reason is a simple reason. Otherwise, you will flood the High Courts with writs and the High Courts will have no time to take up those writs. People will just not have any other way. You can't shut out article 226. But the indirect way of shutting it out is to provide for direct appeal to the Supreme Court. It is the indirect way. Most of the people avail of this. If these courts don't entertain writ petition, because with some appellate decision you can go to the Supreme Court. Otherwise, you are left with no remedy and you have to file a writ; and you will have writs in 22 High Courts and the proceedings will go for ever and ever. Ultimately, it is the multinationals and their lawyers who will defeat all of us. Mr. Kapil Sibal was right. He was saying that. Actually, it is a great opportunity for us. The opportunity is not going to be allowed to us by the foreign nationals. They will try and make our life miserable in this country through our own law, through the law that you are enacting and which we have to enact. Therefore, I request the hon. Minister to see to it that our Controllers are efficient, and the people who man the patent office are efficient. And, you are supposed to have some Opposition Board, as you call it, which is to be appointed by the Controller. Now I don't know what its composition is. That itself has to be extraordinarily efficient. I would suggest that instead of an Opposition Board, by rule, you may provide that the Controller will sit with these experts as the time when he hears the Opposition, instead of appointing a Board, then, the Board hearing it, and the Controller hearing it back again, which all leads to untold delay. We must try to remedy our systematic untold delay systems through this particular legislation. As Mr. Sibal rightly said, we are almost on the top of the world in this particular field, and, therefore, we must have a very efficient legal core that manages this whole thing. Therefore, I would respectfully request you to do the needful.

Secondly, Sir, as my hon. friend, Shri Jairam, rightly said, you have a bad press. The reason you have a bad press is, everybody, goes around

saying, particularly, the housewives, that this is going to raise the price of, essential drugs. And, if the Government is serious about Mr. Jairam's suggestion, which was an excellent suggestion, I would respectfully suggest that you should not only invoke the DPCO for essential drugs and widen it, but also have a new Ordinance, just to show that you are serious; a new Ordinance to control the prices of essential drugs, to show that the Government is really dead serious, because this is the worst thing that is said against you, and everybody will tom-tom you. Without meaning any disrespect, my wife asked me today whether I was going to speak on the Bill. I said, 'yes'. She said, "No no; this is hopeless. The prices are bound to go up." The housewives have this impression all round the country. You must disabuse them. I wish I had the pre-recorded statement of Mr. Jairam Ramesh today which I could have given to everybody. It is correct; it will be a very bad press for us because it will be said that we have fallen into the trap of the multinationals, that we are not going to do anything worthwhile, or, that the poor of this country is going to suffer, so on and so forth. And, we have to meet that. Therefore, your public relations for this Act must be very, very acute and very important. And that is what I would respectfully ask you to do.

Lastly, Sir,—this is where I finish—I wonder why we are not having utility patents. Utility patents are out, under this measure, as far as I can see. Here, I would mention; Section 3 (d) says, "...mere discovery of any new property or any new use for a known substance is not patentable." The Bill has added here, "mere new use". It doesn't make any difference. The Europeans and the Swiss have experimented on this, and they have come up with the idea. And, there is the recent judgement of the New Zealand which says, "Swiss-type claims are allowed." Swiss-type claims are meant for the new use for an existing product, like an aspirin which is prescribed for a cardiac disease. Now that sort of a thing should be encouraged. If it is already there, it is there; but if you can't do it, for God's sake, have it done by rules. That is all what I wish to say. Sir, I would, in general, support the Bill.

डा0 कुमकुम राय (बिहार) : उपसभापति महोदय, मैं पेटेंट बिल (संशोधन), 2005 के समर्थन में खडी हुई हूं।

सर, अनुसंधानक को उसकी मेहनत का फायदा दिलाने के अतिरिक्त एक ग्लोबल सिस्टम की जरूरत के तर्क ने डबल्यू0टी0ओ0 के ट्रिप्स समझौते के तहत इस नए संशोधन को आज हमारे सामने रखा। भारत में पेटेंट संशोधन अध्यादेश, 2004 को लागू करके सरकार ने हमारे पेटेंट कानून, 1970

के संशोधन की प्रक्रिया पूरी कर दी । पिछले दो संशोधन वर्ष 1999 और 2002 में भी हुए थे और सब कुछ और नए संशोधन के साथ यह बिल हमारे सामने फिर उपस्थित है । इसके प्रभावों के संदर्भ में गौर किया जाएगा तो कुछ बातें सामने आती हैं कि भारत में अभी तक पेटेंट की व्यवस्था लागू थी अर्थात किसी भी उत्पाद की प्रक्रिया को कुछ परिवर्तन कर के कुछ नए उत्पाद बना लिए जाते थे और यदि वह बाजार में आता था तो उसे पेटेंट मिल जाता था जिसे तकनीकी शब्दों में रिवर्स इंजीनियरिंग कहते हैं और यह अभी तक हमारे यहां व्यापक तौर पर प्रचलित रहा है । लेकिन अब ऐसा संभव नही होगा, अब सीधे उत्पाद का पेटेंट होगा । सामान्यतः किसी भी अन्य प्रक्रिया से वैसे सामानों का उत्पादन नही किया जा सकता और अगर कोई करता है तो संबंधित कम्पनी को उसकी कीमत अदा करनी होगी और ऐसा न करने पर न्यायालय में संघर्ष करना होगा । इसका असर मुख्यतः एलोपैथिक दवाइयों, रसायनों, खाध – पदार्थो और कुछ सॉफ्टवेयरों पर पडने की सम्भावना व्यक्त की जा रही है । महोदय, इस संबंध में मैं आपको कहना चाहती हूं कि खाध – पदार्थो को, जो इसके दायरे में लाया गया है, यह मेरी समझ से परे है । जो डिब्बा – बंद खाध – पदार्थो की बात की जा रही है, इस क्षेत्र में बहुत – सी गुंजाइश है, क्योंकि भारत जैसे विकासशील देश में, जहां रोजगार के हमारे अवसर सीमित है, हमें इस क्षेत्र में भी बहुत कुछ करने की गुंजाइश थी । हमारे रोज़गार बढ़ने की संभावनाएं थी । उन खाध – पदार्थो और इस जटिल और भाग – दौड़ की जिन्दगी में जब डिब्बा – बंद खाध – पदार्थो के प्रचलन बहुत बढ़ रहे हैं, यदि इन खाध – पदार्थो को पेटेंट के दायरे में न रखा जाता, तो ज्यादा बेहतर था । इसके साथ ही जो कृषि रसायन और कृषि के काम में आने वाले कीटनाशक, जैसी चीजों के विषय में भी जो बात की जा रही है, इसको भी यदि इसके दायरे से मुक्त किया जाता, तो ज्यादा बेहतर था । महोदय, सबसे ज्यादा आशंका दवाइयों को लेकर है । भारत में जिस पर रिवर्स इंजीनियरिंग के द्वारा अनेक दवाइयों की प्रक्रिया में परिवर्तन करके उनका उत्पादन किया जाता था और इस कारण उसकी कीमतें देश में और अन्य देशों में भी काफी कम कीमत में, इनका इस्तेमाल किया जाता था, जाहिर हैं कि अब यह स्थिति नही होगी । इसीलिए कहा जा रहा है कि दवाइयों की की मतें इतनी बढ़ी जाएंगी कि आम आदमी की पहुंच के बाहर होंगी । माननीय मंत्री महोदय अपने जवाब में इन आशंकाओं या संभावनाओं पर प्रकाश अवश्य डालेंगे ।

दूसरी बात, नई पेटेंट व्यवस्था के तहत बहुराष्ट्रीय कंपनियों के वर्चस्व की भी आशंका व्यक्त की जा रही है । वैसे नई पेटेंट व्यवस्था 2005 में अवश्य लागू हुई है, लेकिन इसके वास्तविक प्रभाव संभवतः 2007 से दिखने लगेंगे क्योंकि जो भी पेटेंट जिन उत्पादों का होता हैं, उनके बाजार में आने तक में कुछ समय अवश्य लगता है । उत्पादों के पेटेंट होने और बाजार में आने के बाद ही यह पता चलेगा कि असल में इसका क्या प्रभाव पड़ने जा रहा है । वैसे कुछ देशों ने, जिन्होंने अपने यहां 5-6 वर्ष पहले ही प्रोडक्ट, उत्पाद के पेटेंट अपना लिए थे, वहां के देशों का अध्ययन किया जाये तो यह पता लगता है कि वहां ऐसा कोई भारी विपरीत या नकारात्मक प्रभाव देखने में नही आया है, जबकि उन देशों में दवाओं का इतना ज्यादा मजबूत आधार नही है । जबकि भारत में, हमारे यहां, दवाओं का बहुत ज्यादा, अच्छा आधार है । ...(**घंटी**).... महोदय, लेकिन एक कटु सच्चाई से मुख नही

मोड़ा जा सकता है कि अब रिवर्स इंजीनियरिंग के आधार पर जो छोटी – छोटी उत्पादन इकाइयां थी, वे अब नही चल पाएंगी। आयुर्वेदिक, यूनानी, होम्योपैथिक, सिध्दा इन सारी दवाइयों को पेटेंट के दायरे से बाहर रखा गया है, यह स्वागत – योग्य है। अच्छा तो यह होगा कि भारत जैसे विकासशील और गरीब देशों में जहां पर लोगों के इस्तेमाल में इन दवाइयों का प्रचलन और बढ़ाया जाए तो ज्यादा राहत प्रदान करने वाली बात होगी। एक महत्वपूर्ण तथ्य यह हैं कि भारत के मेल – बॉक्स में अभी करीब हजारों पेटेंट के आवेदन हैं, जिनमें अनेक दवाइयों से संबंधित और रसायनों से संबंधित हैं और इनमें ज्यादा नई खोज और अनुसंधान के दावे है, उनका निपटान कैसे होगा, इसके बारे में भी माननीय मंत्री महोदय अपने जवाब में देने का काम करेंगे। ...(**समय की घंटी**)....

श्री उपसभापति : समाप्त कीजिए।

डा0 कुमकुम राय : पेटेंट कानून 1970 के अध्याय 5 में पेटेंट प्रदान करने के विरोध की चर्चा है। इस संशोधन में प्रावधान है कि स्वीकृत – पूर्व ज्ञापन और स्वीकृति के बाद विरोध किया जा सकता है, जो कि एक स्वागत योग्य कदम है। इसी तरह एक और राहत देने वाली बात यह भी है कि पेटेंटीकृत औषधि – उत्पादों के बनाने और निर्यात करने के लिए बाध्यतामूलक लाइसेंस उपलब्ध होंगे, वैसे देशों को, जो उस उत्पाद को नही बना सकते या जन – स्वास्थ्य की समस्या से निपटने के लिए पर्याप्त मात्रा में नही बना सकते, बशर्ते कि उस देश में बाध्यतामूलक लाइसेंस प्रदान किया गया हो। लेकिन उपसभापति महोदय, इस विधेयक में उत्पादक को पेटेंट धारक से अनुमति लेने की अवधि निर्धारित नही की गई है। इस अवधि का स्पष्ट उल्लेख होना चाहिए। एक खास बात और मैं यह कहना चाहूंगी कि विधेयक में यह प्रावधान अवश्य होना चाहिए कि किन चीजों का पेटेंट किया जा सकता है? वस्तुतः पेटेंट नए आविष्कारों का होना चाहिए, न कि नए कदमों का। पेटेंट की अस्पष्ट परिभाषा होने से, बहुराष्ट्रीय कंपनियां इसका लाभ उठाकर स्वदेशी उधोगो को परेशान कर सकती है। ...(**व्यवधान**)...

MR. DEPUTY CHAIRMAN: Please conclude.

डा0 कुमकुम राय : इसके अतिरिक्त पेटेंट की रॉयल्टी की सीमा 4-5 प्रतिशत के आसपास तय की जाये ताकि लाइसेंस के तहत बनने वाली दवाइयों की कीमतें बेतहाशा न बढ़े और आम आदमी की पहुंच के अन्दर बनी रहें। ...(**व्यवधान**)... बस एक – दो मिनट और। साथ ही मैं जैविक रूपों या पेड़ – पौधों और माइक्रो – ऑर्गेनिज्म के पेटेंटा पर सावधानी बरतने का आग्रह सरकार से करना चाहती हूं। क्योंकि भारतीय चिकित्सा पध्दतियों में पेड़ – पौधों के औषधीय गुणों पर तो काफी काम हुआ है और इसलिए इसे निजी व्यापारिक संपत्ति नही बनाया जा सकता है।

उपसभापति महोदय, हमारे वामपंथी साथियों की तरफ से जो भी संशोधन पेश किए गए, उनमें से 10 जो संशोधन स्वीकार कर लिए गए हैं, उनका मैं स्वागत करती हूं। इन संशोधनों से, मैं समझती हूं कि यह पेटेंट बिल जो यहां लाया गया है , यह बहुत महत्वपूर्ण बना है। इसलिए मैं इसका समर्थन करती हूं। धन्यवाद।

श्री उपसभापति : श्री गांधी आज़ाद । आपके पास 3 मिनट है ।

श्री गांधी आज़ाद (उत्तर प्रदेश) **:** उपसभापति महोदय, पेटेंट (संशोधन) विधेयक, 2005 का मैं समर्थन करने के लिए खड़ा हुआ हूं । वर्ष 1970 के मूल पेटेंट विधेयक में यह तीसरा संशोधन है । इससे पहले राजग के कार्यकाल में वर्ष 1999 और 2002 में दो संशोधन किये जा चुके है । दिसंबर, 2003 में यह विधेयक राजग द्वारा ही लाया गया था, किन्तु स्वयं के द्वारा लाए गए विधेयक पर आज उनका विरोध करना मैं उचित नही समझता हूं । क्या हर बात में विरोध करना ही विपक्ष का काम है? आखिर, आज विपक्ष के विरोध का औचित्य क्या है? संयुक्त संसदीय समिति दो साल में 40 बैठकें करके इस विधेयक का अध्ययन कर चुकी हैं । मैं राजग से पूछना चाहता हूं कि दो वर्षो के अध्ययन के बाद भी इसे पुनः संसदीय समिति को भेजना, क्या समय की बर्बादी नही हैं? इस विधेयक में दवाओं, कृषि – सामानों और उत्पाद से संबंधित पेटेंट का प्रावधान है । मेरा सुझाव इसमें यह है कि गंभीर रोगों की दवाओं को पेटेंट के बाहर रखना जनहित के लिए श्रेयस्कर होगा । बहुराष्ट्रीय कंपनियों को जरूरत से ज्यादा बढ़ावा नही मिलना चाहिए बल्कि उनको नियंत्रण के अंदर रखना चाहिए । घरेलू दवाएं महंगी नही होनी चाहिए ।

उपसभापति महोदय, अध्यादेश के जरिए 1 जनवरी, 2005 को अस्तित्व में आए इस कानून का संसद द्वारा अनुमोदन होना अनिवार्य है, इस बात को ध्यान में रखते हुए यह विधेयक यहां लाया गया है । भारत को उत्पाद आधारित पेटेंट व्यवस्था लागू करने के लिए इस विधेयक का पारित होना भी जरूरी है । इस अंतर्राष्ट्रीय दायित्व को समझते हुए राजग की इस तरह की भूमिका उचित और देशहित में नही है ।

उपसभापति महोदय, आज आम आदमी की यह चिंता है कि पेटेंट कानून के कारण जीवनरक्षक दवाओं के साथ ही साथ बीजों, कीटनाशकों, उर्वरकों की कीमत में बेतहाशा वृध्दि हो जाएगी, इसलिए मैं माननीय मंत्री जी से अनुरोध करूंगा कि वे इस बिन्दु पर प्रकाश डालने की कृपा करेंगे ताकि देश की जनता का भ्रम दूर हो सके । इसके अतिरिक्त गरीबों के हितों की रक्षा के लिए आपात – स्थिति में पेटेंट अधिग्रहण का अधिकार सरकार को अपने पास सुरक्षित रखना चाहिए ताकि आवश्यकता होने पर जनहित और देशहित में इसका प्रयोग सरकार द्वारा किया जा सके ।

अंत में, मैं सरकार से आशा ही नही, भरोसा करता हूं कि इस विधेयक के पारित होने के बाद भी सरकार सदा देशहित और गरीबों के हितों के मामले में सतर्क रहेगी । इसी आशा और विश्वास के साथ, मैं इस पेटेंट (संशोधन) विधेयक, 2005 का समर्थन करता हूं । धन्यवाद।

श्री उपसभापति : श्री शरद जोशी । आपके 5 मिनटा हैं ।

[MR. CHAIRMAN in the chair]

SHRI SHARAD ANANTRAO JOSHI (Maharashtra): Mr. Chairman, Sir, since 1991, I have been associated with this controversy. In 1991, the

debate on Intellectual Property Rights was more centred on agriculture. We talked more on micro-organisms and the *sui generis* systems than of pharmaceutical industry. And I stood for the great institution of Intellectual Property. Rights as also of the product patents. That was opposed by the whole motley club. We had the Swadeshi Jagaran Manch on the one hand, and then we had Leftists on the other. And even Gandhians and Sarva Serva Sangha were opposed to the institution of Intellectual Property Rights.

Sir, the real reason with the history of Intellectual Property Rights in India goes back into antiquity. We have had a system where learning was not supposed to be passed on until one was prepared. The basic dictum says, इमा विधा अशिष्याय न देया । That is, if you are not a true disciple, no learning should be passed on to you. If anybody passes it on, then he earns sin. Similarly, Intellectual Property Rights were despised by the Leftists who thought that any private property is bad. We had a combination of these two things which resulted in opposition to the whole institution of intellectual Property Rights and patents.

The 1970 legislation was a very ugly kind of compromise between these two situations. What it permitted was the process patents but not product patents. Now, the process patent really meant that once you have the final product, you can break that up and do the reverse engineering and claim on the economic advantages coming from that. This suited very well the intellectuals in cities in India, as I call it who are killed in plagiarism and who are capable of copying the research work done elsewhere. Therefore, they welcomed the 1970 legislation. People think that process patenting has helped development of India. I am sorry to say that. It might appear that some of the industries like pharmaceutical industries have developed, but this is because the whole of the country has been pushed in the direction of the West, pushed in the direction of allopathy; because, everybody, who wanted to do some research went towards plagariation rather than doing the original research in the systems of Ayurveda. For-example, today, we have been driven to borrow anti-senility drugs and even anti-lunacy drugs, even though Ayurveda was ahead in both these disciplines since we did not encourage research in Ayurveda and pushed our inventors towards allopathic system and the western systems.

I have two suggestions to make, as far as the basic principles of the Act are concerned. One, Sir, I am opposed to the whole procedure of adversarial hearing of granting of patent rights. It takes long, long time and then there is no secrecy that can be guaranteed over that period. We

recently have an experience where for approving genetic seed, we took seven long years and once it was approved, the Government was not able to protect it. The seed became available in the private hands.

Thirdly, I would also like to suggest that despite the fact that great lawyers have talked of broad perspective, I wish somebody had looked into, Mr. Chriaman, the basic drafting of the law. I tried to draft amendments but could not. Somebody telephoned me at 10 O'clock in the night saying that the Bill was coming before the House the next day. Once I started looking at it, some astounding things have come to light. I must point out that if only they had prepared a fresh Bill, there would not have been any of these problems.

Let us see the first item. The first thing that it suggests is in clause 2(b). I will not read the whole clause because that will take time. There is a reference to section 133. Section 133 means Section 133 of the amended Act. It doesn't say Section 133 of the Principal Act. I went back to Section 133 of the Principal Act and I found that it talks of the convention countries. Now what is provided for is that the Government is required to notify from time to time & list of the convention countries under Section 133 of the Principal Act. By taking away that provision, what has the Minister achieved? The convention countries are those which grant Indians the same rights as are granted to their own citizens. This situation is changing all the time. You cannot say what are the convention country today and you cannot be sure that the list remains unchanged till the evening. So, a notification by the Government of the convention countries is an important thing. I don't know why it has been cancelled. So, the deletion or the substitution of the clause is not only a material error, it hides a very basic drift in the process that the Minister has kept before us.

Immediately next to it is very funny. There is a reference that the word 'or' should be added afterwords "Companies Act, 1956". Where have they mentioned the Companies Act, 1956? It just doesn't figure. You said that you would defend eyeryward of the Bill. I challenge you to defend this.

Then the third thing. The definition of 'food' has been omitted. Why has it been omitted? I can prove that the definition of 'food' has been omitted and it would actually result in disastrous consequences for the farmers. Mr. Chairman, Sir, I could continue with each of the clause and say that it has not been properly drafted. But I would not do that. What I mean to say is that as the amendments came in 1999-2000, the JPC had sat over it. Nobody has really sat with a magnifying glass to look at every word and

every clause. What has come is a very slipshod work. We will become a laughing stock if Rajya Sabha gives its approval to this kind of a poorly drafted Bill. Therefore, I think if for nothing else, at least, for looking into the grammar and for looking into the material corrections of it, this needs to be looked into by somebody. If you do not want to appoint a Committee for that, I am prepared to do that work for you. But that cannot be done overnight. That will take some time. Thank you.

SHRI SHANKAR ROY CHOWDHURY (West Bengal): Mr. Chairman, Sir, at out outset, let me say that I support this Amendment Bill The intellectual property is a very complex issue. I must also register a complaint with you, Sir, that this complex kind of a Bill was given to us at about 8 or 8.30 this morning. We hope to get a little more notice to go through it and prepare ourselves. The entire issue of patents has to balance the protection of intellectual property, it has to balance the interests of local industry, and it has to balance the interests of the people. Now, the main fear of the people, I think, which has been brought out countless time, is the issue of prices. The first thing is that the Government will have a challenge in front of it to ensure that prices particularly of medicines do not go up. Secondly, the whole focus of the debate and discussion on the Patents Amendment Sill has emphasised the fact that India is a knowledge society and a knowledge economy. But this knowledge society and knowledge economy has in turn focussed on the so-called sunrise industries — pharmaceutical, biotechnology, software, agro-industry and such other industries where India is competing with the rest of the world. But I think this Patents Amendment Bill also draws attention to the fact that many areas of the so-called knowledge industry, India is falling well behind the rest of the world and that is the traditionally core industries of engineering and manufacturing. I think in these areas which are supposed to be the traditionally so-called industries, where Indian industry is non-competitive, are losing ground, it is entirely due to lack of interest of the Indian industry in resarch and development facilities. Mr. Kapil Sibal read out a detailed list of patents, which the Indian pharmaceutical and bio-technical industry has filed. It is a very impressive list. We are all very glad to hear the figures. But I would like to know, amongst all these patents that have been filed, how many pertain to traditional industries like engineering and manufacturing which is where China is leading the world. We keep talking about comparing ourselves with China. China's strength is in engineering. I am afraid that India's weakness is in engineering. We have made a mention of the CSIR. It is very good. I would like to know how many industrial firms

have utilised the patents produced in our Indian laboratories for commercial exploitation. Not only the CSIR, we have other series of very, very efficient laboratories like the ISRO, BARC and DRDO. I would like to know, Sir, in our efforts to dominate the world trade scenario, how much of Indian expertise is being utilised by Indian concerns. I think the results seen will be extremely poor. R&D. I think, in our manufacturing industry, must be given some incentive to ensure that they actively invest their resources. At present, their investment of resources in R&D is extremely poor. I am not talking of pharmaceutical companies; I am not talking of bio-pharma companies. I am talking of traditional strength of any country's economy, that is, the manufacturing industry. Their R&D record is extremely poor. So, our basic industries — on which the economy of our country rests — need to take extra effort to ensure that the Indian R&D facilities which are available in profusion, which are available of very high quality, are invested in and are exploited properly and their products are brought into the market. I am afraid India will remain a power-based entirely on knowledge industry; knowledge economy which translated means a softer industry. So, this, of course, is not the purview of the hon. Minister for Commerce but in the overall financial structure of the country, perhaps, our Government may like to consider giving incentives in the form of tax breaks for Research and Development to the heavy industries so that the huge resources of R&D present in the country can be utilised. I do not subscribe, Sir, to the feeling, to the apprehensions expressed by a large section of the House that the country is being sold to the multi-nationals. I think, we are strong enough to oppose them and I do not subscribe to what is known as the Fast India Company Syndrome. East Indian Company is not going to go back. We are going out to other countries. But if we wish to make a mark in the world, then, we will have to invest not only in the selected areas, but also in the broad basic overall areas of industry. With that, Sir, I would like to say once again that I support the amendment. Thank you.

SHRI MANOJ BHATTACHARYA(West Bengal): Thank you very much, Mr. Chairman. I am not going to make any political points. I will seek some clarifications from the hon. Minister and to seek some clarifications I would like to tell something what would help the hon. Minister to improve upon his reply. Sir, I would not speak much because the time is a factor and, at the same time, I have been personally involved in seeing the hon. Minister in improving upon the Bill, as a whole. Some of the concerns of mine have already been settled, have already been addressed to by the hon. Minister. But, Sir, there is a huge grey area, where I am afraid of, and

while supporting the Bill, I would like to place my apprehensions before the Minister, before the august House for its consideration. I am sure Sir; you will also agree that this is a very delicate piece of legislation. Well, we require more time. In spirit, I agree with Mr. Yashwant Sinhaji that we require some more time, some more time to ponder over the entire Bill and also deliberate on the Bill. In a haste we cannot do it. However, I may say, at the outset, that we are unfortunately living in an era of competition. It is not an era of cooperation. However, my friends from both the sides, from the BJP and the Congress Party may say that the TRIPS is an opportunity. But I will say the TRIPS is not an opportunity. TRIPS, in the present form, is a threat on the developing nations. I am sure that this Bill had to be hurried through because we had to be TRIPS compliant. We had to be TRIPS compliant mostly at the instance of the developed countries, developed countries means G-7 countries, the USA and other developed countries. That is why you had to hurry through this Bill. I am sure, in this era of cut-throat competition the worst sufferers are the common people. I am afraid -- Mr. Kapil Sibal, I am a personal admirer of his, however, he may say—that Malaria, Polio, Leprosy, Tuberculosis and CSIR laboratories are doing a fantastic job and they have filed so many applications for Patents. I do not know how many applications have been accepted, or, how many patents have been granted to CSIR. I know, so many patent applications may be there in the Patent Office but hardly a fraction of that is granted. That is true in our office also. At the same time, I must implore upon the hon. Minister that we must be very careful about the patent Office of ours because the Government has allocated some 100 crores of rupees. But even then the Patent Office is very, very poor in this country of ours. The experts are not there in the Patent Offices and the Patent Offices must be augmented thoroughly so that we can face this changed scenario in so far as food is concerned and in so far as agro-chemicals are concerned. To cope up with this paradigm shift, we must have experts. Sir, I must say that our apprehension is — it is a fact — that common people are suffering from Malaria, mal-nutrition, Polio, Leprosy, TB and the treatment for these diseases becomes expensive once this regime comes into force. The drugs for these are available since ages — maybe, some of them are off-patent, and, maybe, the prices of those drugs will not go up — but, Mr. Minister, my apprehension is what will happen in case of cancer? In case of blood cancer, the drugs are to be imported or the drugs for these are patented. The prices of those drugs will go up. However, the other friends may say that the prices of those drugs will not go up. But, certainly, they will go up. If at all the Government is so definite that the

prices will not go up, I don't know what is the hard reality that the hon. Minister is depending upon. The Minister is saying that 97 per cent are off-patent. Yes, he could sell this idea. He could sell the idea that 97 per cent of drugs are off-patent. I do not know what is the ground reality. I do not know on the basis of what he is saying that 97 per cent of drugs are off-patent. Sir, there are some 60,000 formulations in this country. How many of those are off-patent? I would like to know whether it is on the basis of number of formulations or on the basis of total sale value, which, according to reports, stands at US $ 1 billion. So, I would like to know whether it is on the basis of value or is it on the basis of the number of formulations that are available in the country. We must also accept and the House is aware of the public healthcare system in the country. Now, it is called 'Healthcare'. I do not know. Whether it is a proper term for public healthcare system. But, I still say that the health situation is very, very poor in this country. We cannot simply cope up. And the social security measures in this country are also not comparable with the developed countries. Therefore, whatever the protagonists of the neo-liberalisation may say, I do not agree with them.

What is the reality? The Mailbox has been opened recently. Sir, The *Financial Express* is reporting like this. It says, "when the Mailbox was opened, it was found that the domestic companies could file only 465 applications for patents, whereas the multinationals have submitted 1188 applications for patents. And, Pfizer..." the infamous American Company...' ...made applications for 373 patents". Of course, it is going to benefit the multinational corporations. It is going to benefit the multinational corporations of American origin or English origin. I am sure that the House would agree with me that the prices of the drugs will go up. And, if at all the hon. Minister is so sure that the prices of drugs will not go up, let him kindly assure this House that after a certain percentage of rise in the prices of drugs, the Government would subsidise to save the lives of the poor people.

MR. CHAIRMAN: Thank you, Mr. Bhattacharya. Now, you conclude.

SHRI MANOJ BHATTACHARYA: I am concluding, Sir.

Another clarification I wanted to seek from the hon. Minister is this. I will be precise. But, at the same time, one thing I would like to add here.

MR. CHAIRMAN: One thing and it is the last point.

SHRI MANOJ BHATTACHARYA: Sir, I am trying to. I will make my speech precise.

What is the problem? The problem is: on medicines the people do not have the choice. You do not have any choice while purchasing medicines. You cannot amend your choice, because the choice is given to you by somebody else looking at the disease. There you are forced to purchase drugs. You are forced to spend and the poor people will die if they cannot spend.

Then, Sir, another apprehension in my mind is this. In the case of micro-organisms and plants, the hon. Minister said that an Expert Committee would be constituted. I want to know from the hon. Minister whether the Government will declare, on the floor of the House, that the Expert Committee would be rendered sufficient inputs, help and support so that it can function and fight in the international arena against the TRIPS regime...

MR. CHAIRMAN: Enough, enough *...(Interruptions)...* No *...(Interruptions)...*

Thank you. Mr. Tariq Anwar.

SHRI MANOJ BHATTACHARYA. In TRIPS Agreement there is some flexibility.

MR. CHAIRMAN: Mr. Bhattacharya, you please conclude now.

SHRI MANOJ BHATTACHARYA: Sir, are you forcing me to sit down? I am sorry. This is a very serious point. We should have discussed this. I am sorry. I thought of continuing seeking sense of the House. I was requesting you to allow me *...(Interruptions)...*

श्री तारिक अनवर (महाराष्ट्र) **:** सभापति महोदय, मैं अपनी पार्टी की ओर से पेटेंट अमेंडमेंट बिल के समर्थन में बोलने के लिए खड़ा हुआ हूं। अभी जब इस सदन में चर्चा शुरू हुई तो हमारे विरोधी दल के साथी श्री यशवंत सिन्हा जी ने आम सहमति की बात कही थी कि यह एक बहुत ही महत्वपूर्ण बिल है और इस पर आम सहमति होनी चाहिए, ब्रोड कंसेंसस होना चाहिए तथा इस अमेंडमेंट बिल को वापस कमेटी में भेजना चाहिए। चाहे लोक सभा हो या राज्य सभा हो, मैं समझाता हूं कि जो हमारे देश की लोकतांत्रिक व्यवस्था है, यह उसकी सबसे बडी पंचायत है। यदि आम सहमति सबसे आवश्यक हैं तो इन दोनों सभाओं में यह होनी चाहिए। जैसा यहां बताया गया है कि इस अमेंटमेंट बिल को लाने से पहले, इस पर काफी चर्चा हुई है। इस पर जे.पी.सी. ने दो वर्षो तक चर्चा की हैं और तमाम एन.जी.ओज. और जो इस क्षेत्र में काम करने वाले लोग हैं, उनकी राय ली गई तथा उनके विचार लिए गए। अभी जब इस बिल को लोक सभा में लाया गया तो वहां भी इसमें संशोधन हुआ तथा कई सुझाव आए। उन तमाम बातों के बाद, आज जब हम इस पर, चर्चा करने के लिए बैठे हैं तो हम समझते हैं कि उसकी कोई आवश्यकता नही है और विलम्ब करना उचित नही

होगा। सिर्फ विरोध के लिए विरोध करना, मैं समझता हूं कि यह हमारे लिए मुनासिब नही है। महोदय, जब हम सरकार में रहकर बोलते हैं तो हमारी भाषा कुछ होती हैं ...(**व्यवधान**)...

श्री सभापति : ये बातें तो सबने बता दी हैं, आप अपने प्वाइंट पर आ जाइए।

श्री तारिक अनवर : जब सरकार से अलग होते हैं तो हमारी भाषा बदल जाती है।

श्री सभापति : यह तो सबकी आदत पडी हुई है।

श्री तारिक अनवर : यहां जो अभी आम चर्चा हुई और लोगों ने जिस बात की संभावना जाहिर की, वह चिंता खास तौर पर दवाइयों की कीमत पर की थी कि इस अमेंडमेंट के बाद जो सबसे ज्यादा मार पड़ने वाली है वह गरीबों और आम आदमियों पर पड़ने वाली है, इसे उसको सहन करना पड़ेगा। यह एक आम धारणा इस चर्चा से उभरकर आई है। महोदय, मैं तो यह भी मानता हूं कि आज भी, तथा इस पेटेंट अमेंडमेंट बिल के आने से पहले भी, जो दवाइयों की कीमत बाजार में है, आम आदमी की पहुंच के माफिक नही है। आज भी हमारे देश की बहुत बडी जनसंख्या, दवाइयों को इस्तेमाल नही कर पा रही है। क्योंकि इनकी कीमत बहुत ज्यादा है। लेकिन मैं समझाता हूं कि शायद यही कारण है कि अभी जो यू.पी.ए. की सरकार बनी, उसने इस बात का ध्यान रखा कि ग्रामीण रूरल हैल्थ के लिए, उसकी इम्प्रूवमेंट के लिए, एक नेशनल रूरल हैल्थ मिशन लागू करने का फैसला लिया जाए, जिसके लिए इस बजट में लगभग दस हजार करोड़ की व्यवस्था की गई है। मैं समझता हूं कि उस दिशा में यह एक सही कदम है। लेकिन यहां और लोगों ने भी इस बात को बताया है कि मेडिसन, ड्रग्स की कीमत को कंट्रोल करने के लिए, हमारे यहां बहुत सारा प्रावधान है। हमारे पास ऎसी ऎजेंसियां भी मौजूद हैं, जैसे ड्रग्स प्राइस कंट्रोल आर्डर हैं, नेशनल फार्मास्यूटिकल्स प्राइसिंग ऑथोरिटी ऑफ ड्रग्स है। इसी तरह से और भी तमाम अधिकार हमारे पास मौजूद है, जिससे हम अगर चाहें तो किसी भी तरह से जो लोगों को डर महसूस हुआ है, जिसका जिक्र हमारे बहुत सारे साथियों ने भी किया है, उनसे हम लोगों को सुरक्षा प्रदान कर सकते है। लगभग 354 ऎसी दवाइयां है, जो नेशनल एशैंसिएल ड्रग्स की सूची में आती हैं, उनको पेटेंट सूची से बाहर रखा गया है। मैं समझता हूं कि इसमें वे तमाम ऎसी एशैंसिएल दवाइयां हैं, जिनका अभी जिक्र किया गया है। भारत सही मायनों में एक गरीबा देश है और हमारे यहां बहुत सारी बीमारियां हैं जिनमें वे उपयोग में लाई जाती है। जहां तक स्वास्थ्य का सवाल है, हम उसमें बहुत पीछे हैं और उससे हमारी आम जनता बहुत प्रभावित है। जनता के स्वास्थ्य का ध्यान रखने के लिए हम लोगों को, सरकार को, बहुत ही पिकॉशन लेना चाहिए। उसमें कहीं कोई कमी नही होनी चाहिए, मेरा ऎसा सुझाव है। जहां तक मैं समझता हूं, हम आज जिस बिल को इस सदन में स्वीकार करने जा रहे है, वह हमारी एक अंतर्राष्ट्रीय जिम्मेदारी भी हैं जब हम डब्ल्यू .टी.ओ. के सदस्य बने थे, तब हमने इस बात का फैसला किया था, इस बात को कुबूल किया था। डब्ल्यू.टी.ओ. के सदस्य बनने के समय भी इसी तरह की शंका पेश की गई थी। सभी लोग जानते हैं कि उस वक्त जो स्टैण्डिंग कमेटी बनी थी, उसमें यह आम सहमति से पास किया था कि डब्ल्यू.टी.ओ. का सदस्य बनना, राष्ट्रीय हित में है, देश के लिए फायदेमंद है। जिस तरह उसको हमने स्वीकार किया था, उसी तरह आज इस बिल को भी हम

लोगों को आम सहमति से स्वीकार करना चाहिए, क्योंकि हम समझते हैं कि यह राष्ट्र हित में है ।

श्री सभापति : ठीक है । आपका बहुत – बहुत धन्यवाद । श्री एकनाथ के. ठाकुर ।

SHRI EKANATH K. THAKUR (Maharashtra): Sir, I want to protest, therefore, I came in black. ...*(Interruptions)*... Sir, I am a sad man today because my name is 'Ekanath' and I have to oppose something that is presented by Shri 'Kamal Nathji'. There is natural sadness in me. Sir, this is a legislation of momentous importance which will affect each and every one of our 1070 million people. And the tearing hurry in which it has been presented to this House this morning;the way in which the Parliamentarians are being taken for granted...

MR. CHAIRMAN: This point has been raised by many Members. Please come to the next point.

SHRI EKANATH K. THAKUR: Sir, I want to say this on behalf of my Party also. I represent my Party and my State. I represent my State.

MR. CHAIRMAN: This has gone on record. That is enough.

SHRI EKANATH K. THAKUR: I think, Sir, I am the only Member from my Party who is speaking in opposition. Sir, this became a mockery because my Samajwadi Party colleague said that he is speaking out of confusion. One lawyer Member from Tamil Nadu of this House said that he is speaking without understanding the bill. Such a situation was inflicted on honoured members of this House. Therefore, Sir, this is a very sorry state of affairs. Sir everybody is speaking on this Bill in a serious manner. So, I will also come to some seriousness. But let me first tell you that there is a famous play, 'Hamlet' in which Hamlet says, "To be or not to be is the question." When asked, he says, "No; it is not because my mother married my father, but why she did so before the corpse of my father was taken away. And he says, "Why this indecent haste?" Sir, they are pulling the name of Vajpayeeji in this discussion. Shri Vajpayeeji or the NDA Government was not against reforms. We initiated reforms. We wanted the patents amendment. And there is no question of our going back on it. The only thing is, we wanted a proper debate. Sir, an appeal is being made that we should project a united polity, otherwise, we will project a divided polity. Sir, the other day I was in Montenegro. Some Indians there asked me, "What is the latest in the fight between the Left and the Congress?" Everyone knows that this UPA Government is divided. Everyone in the world knows it. So, where is the question of projecting a united polity, when the formation of a Government itself is so grossly divided? What

6.00 PM

were their speeches today? Sir, I want to tell you only one thing. Only yesterday, with your permission, we had a discussion on farmers' suicides. This Bill will result in increase of prices of farm inputs like fertilizers, pesticides, fungicidis insecticides etc. and make the life of the farmer futher miserable. Yesterday, Sir, one of the best interventions in the debate came from erudite economist Shri Jairam Ramesh, of whom I am an irrepressible admirer. Shri Jairam Rameshji, said that the real tragedy of fanners comes from the fact that they cannot spend on health care. That is the real question today. Shri Jairam Ramesh said this yesterday. But, today he, probably, gloised over that fact. But, Sir, through you, I would like to tell Shri Jairam Ramesh that I got cancer in 1970. I got seven surgeries done for cancer. I have got radiation done for cancer. I have got chemotherapy done. I have got two tumours right now sitting here above my left ear. Being a Cancer patient in my social work I am working for the cancer patients and hundreds of them have been deprived of proper treatment. After the second amendment, because after the second amendment, cancer drug prices have sky rocketed. Sir, you should see the reality. You visit with me the Tata Memorial Hospital where I am working for some of the cancer patients. Sir, with this Bill medicine prices will go up through the roof and then only we will realise and repent. This is what India has always done. Ours is a major country, but we lose on major opportunities.

Sir, there are many speakers here who can speak in lucid, easy and flowing style. They can make verbal filigree. And then good oratory is being mistaken for good logic. Sir, my points are few, which I have drafted. The first thing is the flexibility under TRIPS has not been availed of. The freedom given by the Doha Declaration has not been availed of. This Bill is more in favour of patent holder than the consumers. The Bill has to address the issues of patentability of pharmaceuticals in a fair and firm way. There is an ambiguity in the definition of patentable invention leading to confusion on giving of patents. The Bill provides for highly restrictive and rigid provisions for compulsory licensing. Even the provisions of commercial licensing are injurious to India's interest. The Bill does not provide adequate provisions for a number of issues such as right to manufacture for export, adequate protection for indigenous R&D, control of term of patents, revocation of patent to protect the public interest in the condition of blockade etc. There are several such issues which are not addressed and this House is now being pushed into this legislation. Therefore, on behalf of my Shiv Sena Party, as a Member from Maharashtra, I oppose this Bill. Thank you.

DR. BIMAL JALAN (Nominated): Thank you, Mr. Chairman, Sir, at this stage, I shall be brief. Since the whole patent debate is on product and process, I will also divide my remarks for one minute as for one-and-a-half minute on the product, which is this Bill, and then the process through which we have got where we have. Sir, so far as the product and the Bill are concerned, I must say that this is a much better product because of the intervention of outside support of a party, from whatever we read in newspapers. I must congratuate the Minister for being farsighted and for taking into account all the amendments that have been suggested, at least, most of the amendments which have made this Bill a better Bill. I can say this is not an ideal Bill. Obviously, there is no Bill of this type which can be ideal. And we would have stuck to our earlier patterns if we could. But it is a part of international negotiations. So, I think, this is the best that could be achieved in the time that is available to us. So, I support this particular product, that is, this Bill. There are just two points on this product. One is what Mr. Basu had suggested — I listened very carefully to him — that we should be making quick amendments. I would say that 'no', we should not be in a hurry to make amendments except for drafting amendments of the type that Mr. Joshi said or for removing ambiguity of the type that Mr. Thakur said. Because introducing uncertainty in regard to what the content of this Bill is, can only reduce the power of research and development or the innovative skills of our own people. That is the first suggestion. Secondly, Sir, on prices, a very important point has been made, which is of utmost importance. There is no inherent reason why process patenting should lead to increase in prices. There is no inherent reason, because whereas in the branded product the prices can increase, but in a generic product, there is no reason why prices should increase. There are means of doing it so that you make supplies for abundance of the generic drugs which makes the essential drugs available in plenty at prices which could be even lower than today. And our people are competent to do it. This is on this product which is this Bill.

Now on the process I feel extremely uncomfortable. It is not the hurry about which everybody has said. Sometimes, you may have to do things in a hurry because the national interest demands it. My main problem with the process is that if the same set of amendments, which have made it better, had come from another set of people who were not providing the balance support to the present coalition, would you have accepted it? I doubt it. So, Sir, we cannot have an important Bill of this type, an important movement of this type, an important policy of this type, dependent on,

what you might call, the compulsions of coalition politics. I think I am making an important point, as a citizen, that if these amendments had to be made, these could have been made in the House, after a debate. We could have done this two days ago or three days ago. We are reading this in the newspapers. Now, supposing, I had a very good amendment to suggest as a nominated Member of this great House, when would I make that suggestion?

SHRI KAMAL NATH: You could make it right now.

DR. BIMAL JALAN: Right now, but where? You don't have the time. You have given me only three minutes. I have no time to discuss. You have discussed with some people somewhere outside. Maybe, I was going to suggest one measure, which could bring the prices down by fifty per cent. But I can't suggest it.

So, Sir, really, honestly, as a citizen of this country, I am urging you that the process through which we adopt for these important Bills has to be different from what it has been. I congratulate my CPM colleagues, for having brought suggestions which were good, which have made the Bill a better one. But supposing they had made the same suggestion, if there were not a balancing Party what would have happened? So, on process, Sir, I have complete discomfort, but that doesn't change my support for the product, and my appreciation to Shri Kamal Nath for listening, for whatever reasons good or bad, to certain good amendments. He didn't give me an opportunity to listen to my amendment to reduce prices by half, but then I can't help it. I don't want to tell him now for him to reject it. So, I am not going to tell him how to reduce prices of drugs by fifty per cent. Thank you.

MR. CHAIRMAN: Shrimati N. P. Durga. You have only two minutes to speak.

SHRIMATI N.P. DURGA (Andhra Pradesh): Sir, there is no denial of the fact that we are bound by TRIPS and there is no other go for us, except to comply with the provisions of TRIPS and, in that process, we have amended our Patent Act twice, first in 1999 and then, in 2002.

Sir, I would suggest, for the consideration of the hon. Minister, that 'invention' should be defined as a basic novel product, or, process involving inventive step and capable of industrial application and not as has been explained in Section 2 of the Act. As the hon. Minister is aware, the WTO is yet to complete its mandated review of life forms. So, I suggest that the

life forms and micro-organisms should be specifically excluded from patentability.

Sir, I now come to compulsory licensing, which is the core aspect of the entire patent system. This is helping the domestic enterprises in meeting the ever-increasing demands of the pharmaceutical products at competitive prices. We are now allowing compulsory liconsing through this amendment But the problem is that the procedure is very complex and cumbersome and leaves.many loopholes. As a result, the patent-holders will delay or prevent grant of such licenses. The Doha Declaration on TRIPS Agreement and Public Health has recognized the gravity of public health in the developing countries. But, the Ordinance promulgated last December imposes an unnecessary hurdle on many developing countries. Now, the Ordinance requires them to grant compulsory licenses even if the drug is not patented there. This is not required under "waiver" to Article 31 (f). So, I request the hon. Minister to remove this so that India's generic producers, who produce them for local needs and for exports, will be able to continue their successful supply of low-cost products to the Indian and world markets.

Then, Sir, I just failed to understand why the Government has changed the right of "pre-grant opposition" by third party before any patent is granted, to a "discretionary act" by the Controller General of Patents? Since TRIPS Agreement and many developing countries permit the use of 'pre-grant opposition', what are the reasons behind India diluting this? This is particularly important with respect to mailbox applications. For example, there are nearly 7000 applications received in the mailbox. Recently, these 7000 applications were made public and of these, only 250 applications related to new chemical entities and the remaining related to minor changes to the structure of molecules. So, I strongly plead for grant of 'pre-grant opposition' to patents. Otherwise, our generic producers will not be able to fight with the strong multinational companies.

Lastly, I, again, failed to understand why the Minister is hesitating in sending this Bill to a Joint Select Committee. Let it go to a Joint Select Committee. I request for sending the Bill to the Joint Select Committee or, the concerned Standing Committee for a thorough examination. Thank you, Sir.

डा0 मुरली मनोहर जोशी : सभापति जी, मैं आपका बहुत आभारी हूं कि आपने मुझे इस विवाद के अंत में कुछ विचार फिर से रखने की अनुमति प्रदान की ।

सबसे पहले तो मुझे यह कहना है कि आज सवेरे डिबेट में यह बार – बार कहा गया कि यह

ऑर्डिनेंस बहुत जल्दी समाप्त होने वाला है, इसलिए हम इसको किसी भी रूप में विभागीय स्थायी समिति के पास नही भेज सकते । उसके बारे में रास्ते बताए गए थे और मे ऐसा मानता हूं कि इस विधेयक को स्थायी समिति के पास भेजना ही इसका उचित मार्ग था । मुझे आश्चर्य तब भी हुआ जब मैंने देखा कि पेंशन बिल पर भी एक अध्यादेश था, वह तो स्थायी समिति को भेज दिया गया, लेकिन इसको नही भेजा गया । यह बार – बार तर्क दिया जा रहा था कि क्योंकि हमारी कुछ अंतर्राष्ट्रीय प्रतिबध्दताएं हैं, इसलिए हम इसे नही भेज पा रहे है । सभापति जी, हम लोगों ने बराबर इस बारे में आश्वासन दिया था कि हम अंतर्राष्ट्रीय स्तर पर जो हमारी प्रतिबध्दताएं हैं, उनसे बाहर नही है । हम उनको स्वीकार करते है । इसलिए जहां तक टिप्स के अनुसार इस विधेयक को पास करने का सवाल है, इसमें कहीं मतभेद नही हैं – न हम में मतभेद हैं, न उन में मतभेद है, न उनके सहयोगियों में मतभेद है और न हमारे सहयोगियों में मतभेद है । जो ट्रिप्स की अन्य सुविधाएं दी गयी हैं, मतभेद केवल उनके अनुपालन के सवाल का था कि उनको इसमें शामिल क्यों नही किया गया? मैंने सबेरे भी कहा था कि ट्रिप्स समझौते के जो विभिन्न अनुच्छेद हैं – अनुच्छेद 1, अनुच्छेद 7,8 और अनुच्छेद 70(3), इनको इसमें अनदेखा किया गया है । उनको देखना जरूरी हैं क्योंकि विश्व के अनेक देशों ने, अनेक संस्थाओं व अनेक विशेषज्ञों ने इस बारे में बल दिया है कि इस विधेयक में जिस प्रकार की व्यवस्थाएं हैं, वे व्यवस्थाएं गरीब देशों के लिए संभव नही है और उस कारण से अपने यहां के विशेष रोग जैसे एच0आई0वी0 एडस, ट्यूबरकुलोसिस, मलेरिया, कालाबाजार जैसी बीमारियों के महंगे इलाज की दवाइयां उन्हें नही मिलेंगी । इस बारे में 10 – 15 देशों ने डबल्यू0एच0ओ0 में प्रतिवेदन दिए, अभ्यावेदन दिए और डब्ल्यू0एच0ओ0 ने भी हमें फरवरी, 2005 के महीने में स्वास्थ्य मंत्री को लिखा, प्रधान मंत्री को लिखा और कुछ लोगों ने महामहिम राष्ट्रपति जी को भी लिखा, बहुत से देशों के प्रतिनिधि मंडल हमसे भी मिले और उन्होंने यह आग्रह किया कि आप जो कुछ कर रहे है, वह अपने यहां ट्रिप्स के अनुसार कीजिए । इसमें हमे कोई आपत्ति नही है, लेकिन अभी तक आप जो कर रहे हैं गरीबों की स्थिति को ध्यान में रखते हुए, उसको भी कीजिए । मुझे बहुत अफसोस के साथ कहना पड़ता है कि हमें इस विधेयक के बारे में ऐसा कोई आश्वासन अभी तक नही दिया गया कि इन गरीबों की बात सुनी जाएगी । मैं उन गरीबों के नाम पर कहना चाहता हूं कि विश्व में आज केवल 1 बिलियन लोग ऐसे है जो इन दवाइयों का ठीक प्रकार से लाभ उठा सकेंगे, 5 बिलियन लोग ऐसे हैं जिनके लिए कठिनाइयां हैं और करीब – करीब 1 से डेढ़ बिलियन लोग ऐसे हैं जिनकी प्रतिदिन की आमदानी 1 डॉलर से अधिक नही है । यह विश्व बैंक के बयान है । यू0एन0डी0पी0 कहती है, डब्ल्यू0एच0ओ0 कहता है और सवाल यह हैं कि ये लोग एच0आई0वी0 एडस और ऐसी बीमारियों से कैसे मुक्त हो सकेंगे? जो दवाइयां हम 8 से 10 हजार रूपए में दे रहे हैं, उसको नावार्टिस 1 लाख 20 हजार रूपए में दे रहा है । तो उसका अनुमान आप लगा सकते हैं कि ऐसे लोग कैसे इस विभीषिका से बच सकेंगे जबकि एच0आई0वी0 एडस, मलेरिया, कालाजार हमारे देश में और अन्य गरीब देशों में बहुत बडी मात्रा में प्रचलित है? इसकी तरफ इसका ध्यान नही है । फिर इसमें कुछ ऐसी भी कमियां हैं जिनकी तरफ अभी तक किसी ने संतोषजनक समाधान नही सुझाया

कि ऐसी परिभाषाएं होनी चाहिए जिन परिभाषाओं के कारण spurious patents नही मिलेंगे । उसका भी कोई इलाज नही है । सभापति महोदय, आज अमेरिका में भी इस प्रकार की स्थिति आ गयी है कि इस strong patent regime से उनके यहां परेशानियां पैदा हो गयी हैं जहां कि लाखों की तदाद में आने वाले समय में पेटेंटस के आवेदन आएंगे। उनको आप कैसे देखेंगे? महोदय, मुझे याद हैं कि एक माननीय सदस्य ने इस तरफ ध्यान आकृष्ट किया था कि उसका परीक्षण करने के लिए हजारों लाखों लोग चाहिए । आपके पास तो दो सौ, ढ़ाई सौ लोग हैं । तो स्थिति यह है और मुझे ऐसा बताया गया है कि शायद आज ब्रिटिश ब्रॉडकास्टिंग कॉर्पोरेशन ने इस बारे में अपनी टिप्पणी देते हुए कहा हैं कि अगर ऐसा बिल यहां पास हो जाएगा तो इस देश की दवा बनाने वाली जो कंपनियां हैं, उन में से 50 प्रतिशत पर प्रभाव पड़ेगा । अब यदि हमारे इस विधेयक की इस प्रकार की समीक्षा सारे विश्व में हो रही हैं तो मैं यह समझता हूं कि इसकी कमियां, इसकी खामियां दूर करना जरूरी है । मैं दुनिया के तमाम गरीब लोगों की तरफ से यह आवाज उठाना चाहता हूं, उन लोगों की तरफ से, उन देशों की तरफ से आवाज उठाना चाहता हूं कि जो ...(**व्यवधान**)...

MR. CHAIRMAN: Let him speak. बोलने दीजिए, दो मिनट...(**व्यवधान**)...

डा0 मुरली मनोहर जोशी : कि जो हमारे इस विधेयक के पश्चात जिनकी जीवन की आशाएं समाप्त हो जाएंगी, जो दवाइयां आठ हजार और दस हजार रुपए में मिलती हैं ...(**व्यवधान**)...

श्री सभापति : ठीक है, बात आ गई है ...(**व्यवधान**)...

डा0 मुरली मनोहर जोशी : वे एक लाख बीस हजार रूपए में मिलेगी । सभापति जी, यह बहुत महत्वपूर्ण विषय है । कृपया मुझे अपने विचार रखने की अनुमति दें । ...(**व्यवधान**)... मैं आपका संरक्षण चाहता हूं । ...(**व्यवधान**)... सवाल यह हैं कि इनका संरक्षण कैसे होगा और भारत ने इस बारे में हमेशा नेतृत्व किया है । दुनिया का, विशेष रूप से तीसरी दुनिया का नेतृत्व किया है । ...(**व्यवधान**)... मेरे सामने प्रधान मंत्री जी बैठें हैं । मुझे साउथ – साउथ डॉयलॉग के उनके भाषण की स्मृति आज भी है, जो विचार इन्होंने तब वहां प्रकट किए थे और अगर उन विचारों पर आज भी वे कायम हैं, तो मैं समझता हूं कि उन्हें स्वयं ध्यान देना चाहिए था कि इस विधेयक में इस प्रकार की खामियां न रहें । मैं यह कहना चाहता हूं कि जो बात कही गई और अभी एक सम्मानित सदस्य ने कहा कि इसका वे रास्ता बता सकते थे कि दवाइयों का दाम 50 प्रतिशत कैसे कम किया जा सकता है । वे रिजर्व बैंक के गवर्नर भी रहे हैं, प्रख्यात अर्थशास्त्री हैं, वे भी यह समझते हैं कि इस विधेयक में जहां बहुत – सी अच्छी बातें हैं वहां इस बात की कमी है और इस बात पर ध्यान दिया जाना चाहिए और किसी ने यहां प्रश्न भी उठाया कि आप कैसे यह आश्वासन दे सकते हैं कि दो वर्ष – तीन वर्ष के बाद दवाइयों के दाम नही बढ़ेगे । वे अभी से बढ़ने शुरू हो गए है । इसी प्रकार से जो पेटेंटेबिलिटी की परिभाषा हैं, उस परिभाषा का भी अभी तक किसी ने समाधान नही किया है । उससे होने वाली

जो कठिनाइयां हैं, वे अपने आप में बहुत अलग है, इसलिए मेरा यह अनुरोध है कि आज भी, अभी भी, जो मैंने अभी तक सारे वक्तव्य सुने है, उनको देख कर इस विधेयक को आप स्थायी समिति के पास भेंजे । मैं बार – बार इसको सदन से आग्रह करता हूं । कि देश के गरीबों के नाम पर दुनिया के गरीबों के नाम पर, बीमारों और असहायों के नाम पर और इस देश के हजारों लोग जो बेरोजगार हो जाएंगे, इस 50 प्रतिशत...(**व्यवधान**)...

श्री सभापति : आप बैठिए, please take your seat, Don't disturb.

डा0 मुरली मनोहर जोशी : आज सवेरे भी किसी ने यहां से कहा था कि उत्तेजना से रक्तचाप बढ़ जाया करता है और अब यह विधेयक पास हो जाने के बाद रक्तचाप को ठीक करने वाली दवाइयां बहुत मंहगी हो जाएंगी ...(**व्यवधान**)...

श्री सभापति : ठीक है, ठीक है ।

डा0 मुरली मनोहर जोशी : इसलिए यह आवश्यक हैं कि इन सारी बातों को बहुत शान्ति के साथ सुना जाए, शांति के साथ इस बात की जाए और इसमें हमने भी बार – बार कहा है कि पार्टी के हिसाब से नही, राजनीति के प्वाइंटस स्कोर के हिसाब से नही, राष्ट्र के और मानवता के हिसाब से इस विधेयक पर विचार किया जाए । मैं फिर सदन से अनुरोध करूंगा कि इस अध्यादेश को अन – अनुमोदित रखें और इस विधेयक को स्थायी समिति के पास भेजने का प्रबन्ध करें । धन्यवाद ।

SHRI KAMAL NATH: Mr. Chairman, Sir, we are at the conclusion of discussing serious legislation, legsilation which was approved by the Lok Sabha yesterday. I have, very carefully, heard the concerns of the Members, several Members across the House and, at the first instance, when I was responding to the wisdom of Dr. Murli Manohar Joshi and his concerns, I did say that the concerns expressed by him are no less than the concerns we feel. These are not the concerns which are new to us. These have been our concerns for a very long time, much more than, perhaps, they would be able to even understand. Sir, there were letters he read out; there were concerns of TRIPS; there were concerns he mentioned about article 8 of TRIPS; he mentioned about article 7 of the TRIPS; and, he also mentioned that what was not patentable, was that which was in the public domain. Sir, these are very basic issues. Sir, I want to thank the Members who have studied this in detail. Dr. Murli Manohar Joshi gives an impression as if this is a piece of legislation, which has been sprung upon him. Sir, with great respect. I want to tell Dr. Murli Manohar Joshi that the points that he has raised relating to the WTO and the TRI PS were issues of the first and second amendment. I am continuing a process. The first and

second amendments were brought after consideration by your Government, by your Cabinet. Mr. Yashwant Sinha was a Member of that Cabinet, many of you sitting there were Members of that Cabinet, which brought to the Lok Sabha and the Rajya Sabha the first and the second amendment.

Sir, I am astonished that you are sounding critical of the very amendments , that you brought in. I am astonished that you are highlighting the concerns, which I thought you would have considered as addressed, when you brought in those amendment. We have the JPC — I don't want to be repective — and friend, Mr. Nilotpal Basu had the JPC report here. The proceedings of the JPC took into consideration all the issues, and, the JPC report was placed before this House. It was the earlier Cabinet. I don't want to keep referring to it because as I said what is of the greatest value today is that we have a common objective. There is no confrontation on this. When you speak of the poor, you speak of the needy, you talk of medical care, do we differ with you on that, do we need to be sermonised by anybody on that, our Government does not need to be sermonised on that, that has been our concern. So, Sir, as far as this third amendment is concened, we all know about this third amendment. It was introduced in December, 2003. It came in the Lok Sabha in December, 2003, and, you are saying that it is new.

I want to remind the hon. Members who were here in the House, and, most of them were, that in December, 2003 when this legislation was brought in, that this legislation did not just come in. What is the background of this Bill? When we came into the Government, at the end of May last year, I very carefully considered, I looked at the records of what consultations have been made, and, my predessor Minister had recorded that widespread consultations which have been held. What did I see from the records? I found from the records that inter-active sessions across the country, across 17 cities have been held, presentations of pharma associations and organisations have been held. There was an Inter-Ministerial Group, which had considered this legislation, and, the same Government is saying all this, that is why I am astonished.

I am really astonished that the same Government says all this, and, of course no legislation can come here without the Cabinet approval. The same Cabinet would have considered that legislation before it came here, and, it said, the records show, that before this legislation came in, interactive sessions have been held with scientists, with academicians, with economists, with industrial representatives, with Chambers, with industry,

with journalists, with NGOs, with the State Governments, with laywers and also with verious groups.

All this has been done, and, you are talking about the Standing Committee. You have suggested nothing to us. How could all that was done over so many months now we redone in eight days? I am astonished. All the suggestions and views — I saw on the record — on which the previous Government was informed, the Cabinet was informed, had been considered; issues were analysed, discussed and reviewed; and the law effectively balanced and calibrated intellectual property protection with public health, national security and public interest. All this happened prior to December, 2003.1 would like to tell hon. Members here, Sir, that this is not a Bill which came at 10.30 in the morning. This is the Bill, which arrived in this House in December 2003, and was brought to this House by the Government of the day, which had widespread discussions on this Bill across the country. Another charge was made that why we did not bring it earlier. Sir, it is a serious matter. *...(Interruptions)...*

SHRI YASHAWANT SINHA: I am sorry to .interrupt, Sir. After all these consultations were held, the Bill that we introduced, was still referred to the Standing Committee. I think the hon. Minister is aware of that also.

SHRI KAMAL NATH: Sir, I would like to tell something to the hon. Member because he has also brought in some amendments. I believe that he was a Member of the Cabinet, which recommended this Bill to this House. And, he has brought in amendments. I agree, one can be wiser on hindsight. To my friend, Mr. Yashwant Sinha, I would request, when he is wiser on hindsight, do not get limited to being wiser on hindsight only with regard to these amendments. He can still be wiser on hindsight not sitting there, but sitting here. If he is wiser on hindsight *...(Interruptions)...*

SHRI YASHWANT SINHA: I would only point out to Mr. Kamal Nath that he has become wiser over the last three days and brought in amendments himself. How did he bring in amendments, if he had not become wiser?

SHRI KAMAL NATH: I will tell you, how and why. *...(Interruptions)...*

DR. MURLI MANOHAR JOSHI: Is it the effect of your wise company?

SHRI KAMAL NATH: Absolutely, after I met you eight days ago. Sir, I do not think we should trivialise this issue. *...(Interruptions)...*

MR. CHAIRMAN: Please, come to the point.

SHRI KAMAL NATH: Sir the point is this. Sir, this point that this is bring sprung on this House; this saying that this legislation has not had across the board discussion, I think, is not accurate. I think, this is not a Bill where we need to be scoring points. Dr. Murli Manohar Joshi asked just now that when we have 94 sent the Pension Bill to the Standing Committee, so why not this Bill. Now, here is a Bill which came in December, 2003 and the Pension Bill just came a few days ago. Obviously, many friends, political parties and many concerned groups may like to have a look at it, but I do not think that this is a matter which ...*(Interruptions)*...

SHRI ARUN JAITLEY: Both were Ordinances on the same day. ...*(Interruptions)*...

SHRI KAMAL NATH: I am saying so. But this was not a Bill, which was new; the Patent Bill had come in December, 2003. That is the point I am trying to make. ...*(Interruptions)*...

डा0 मुरली मनोहर जोशी : आर्डिनेंस क्यों लाए थे, वह भी तो हमारा ही बिल था ।

SHRI KAMAL NATH: I sat and listened very, very quietly. Please, let me make my point. I assured you in the beginning that I would try to dispel your fears and I am trying to do that, please, give me an opportunity. Sir, Dr. Murli Manohar Joshi mentioned that we had not taken full advantage of the flexibility. I would have been happy if he had only cited me where. Because, I believe, we had used the entire elasticity which was available to us. I said so. In November, I wrote to the Leader of your party, ShriL.K. Advani. We had a discussion. I wrote to all the parties, i said this in the morning. My friends from the Left came to me and I disagreed with them on some points. They tried to covince me and I tried to convince them. They raised some very valied concerns. They brought to our attention some of the elasticities, which, they in their opinion thought, could be used. Mr. Nilotpal Basu said thai we still had differences on some points. There was a reality of the TRIPS, which I requested them to understand. Shutting our eyes against the reality would not help. So we agreed. There were two issues on which we disagreed. I said we would refer them to an-Expert Committee. One of them was concerning micro-organisms. It is not that we were shut. I did not come to the House 'shut'. If Dr. Murli Manohar Joshi has suggested that here is an elasticity which we can make use of, certainly I am open for that. But Dr. Jalan said that you have some formulation where prices of drugs will come down by 50 per cent. I think, you should try and get a patent on that, patent on reducing the prices by 50 per cent. I am sure, the Patent Office would consider this

suggestion for a patent. Sir, the point I am trying to make is, there is today a mention in the debate, one of my friends mentioned, that we are losing our sovereignty. Sir, the WTO was not thrust upon us. We acceded to become Member of the WTO, we chose to become a member of the WTO and all those countries who never acceded to become members of the WTO when Shri Pranab Mukherjee and the Government of that day took that decision, we acceded, nobody thrust down our throat. The Left disagreed with us, at that time, vehemently. And when today, we look back, we agreed on the TRIPS. When agreed on the TRIPS, there was a Multi-Fibre Agreement also. It was not that TRIPS was a stand-alone thing which we had a choice to take or not to take. My friends know that both the Multi-Fibre Ageement and the TRIPS came into operation from 1st January. Multi-Fibre Agreement ended on 31st January, the quota regime ended. These things happen. This was a part of the oral thing. But what happended in this period of ten years, like I said, "Why WTO?" We can differ, but facts can't change. Against the exports which we had in 1994 of 26 billion dollars, in a few days, when this year ends, we will have exports of 75 billion dollars. The pharmaceutical industry which have a few crores of rupees of exports today, at the end of 31st March is going to have exports of 16,000 crores. Trade is changing, world is changing and India is changing. We have got our scientists, we have got our technicians. I have heard that the Indian pharmaceutical industry is pleading that they want this patent regime. They are pleading. What are they saying? They have drawn my attention to a key-note address of the 29th national meeting at the American Society. They are warning their scientists of the cutting-edge technology that is coming out of Indian research institutes. In the British think-tank in Chatham House recently a seminar was conducted on:" Can India change the paradigms of R&D in the West?" The new realties are beginning to seep in that India scientists are ready to face the challenges of the post-patent era. And as was said by one of the friends here about India's role, the number of patents with Indian scientists. It's a great tribute to Indian scientists and Indian technicians as Shri Kapil Sibal or somebody else, probably Shri Jairam Ramesh mentioned. So, one company says that they have been able to attract Indian scientists for abroad and five global patents for a cancer drug which originate from the hills outside Mumbai, five global patents for malaria and authorises. Our scientists have set the goal of taking an Indian drug to go global for 50 million dollars, whereas the drug to get a patent would cost one billion dollars, So, Sir, this is a paradigm shift which is taking place. Sir, when we came into Govenment, I needed time. I studied the issues on the

discussions that my predecessor had held. That's why I spelled out the details. And this was taken — and I believed it was in the light of this — that your Cabinet decided to approve this Bill and send it to both Houses of Parliament, it's in the light of those discussions, it's in the light of all the suggestions received, this Bill was put on the internet way back in August, 2003 much before it came here. The draft Bill was put on the internet so that people could react to it. What Dr. Joshi said, the concerns he mentioned, those letters I also have. For the last three or four months, I am as much concerned as you are. I don't have any difference of opinion with you on those concerns. So, when in November, I wrote to all the parties, the Left gave some suggestions. They gave some very valuable, useful suggestions. We accepted those suggestions. They gave us suggestions, where I thought, we had the elasticity, and we could take on board those suggestions. We accepted them. On two other issues, on the issue of micro organisms and whether it is going to be a new chemical entity or a new entity, we agreed that we will refer it to an Expert Committee. So, just saying that on this Bill, we have not had any consltations, there is no national consensus on this, I think, is not stating the facts, as accurately, as possible. Sir, there have been concerns expressed as to what will happen to the prices of drugs at the moment. Sir, I want to say that the Drug Controller from 1995 up to 2005, has approved 195 drugs for sale in India in ten years, out of which 188 are pre-95 molecules. The balance is seven. Nothing will happen tomorrow morning, as somebody said that tomorrow morning, the drugs prices will go up because of the Patents Bill. There is a process. Even though they are seven in number, we have to first apply for a patent, we have to see whether they are patentable, whether they come under the test of public domain, whether they come under all the series of tests. Then, at the Left's suggestion-, we brought in the pre-grant opposition. Mr. Arun Jaitely gave me this suggestion. I brought it in.

SHRI ARUN JAITELY: Well, when I gave you the suggestion, you rejected it. But when the Left gave you the suggestion, you accepted it. *...(Interruptions)...*

SHRI KAMAL NATH: I tell you, at that time, I did not accept it. *...(Interruptions)...*

SHRI NILOTPAL BASU: He was circumspect with your suggestion.

. SHRI KAMAL NATH: In fact, when the Left gave me the suggestion, I told them that Mr. Arun Jaitely also gave me this suggestion. But, when both of you were together to give me the suggestion *...(Interruptions)...*

Anyway, there is the process of pre-grant opposition. So, even if somebody applies for a patent today, nothing will happen tomorrow morning, nothing will happen next month and nothing will happen next year. This fear that the prices will go up from tomorrow, is not based on facts. I must tell Mr. Nariman to tell his wife one thing, because he said that his wife was very upset with him about this legislation. Sir, you understand this legislation better. If you cannot explain the law to your wife, I am afraid, I will never be able, to explain anything more to your wife. It takes one to three years before any of these seven drugs could get it.

Then, I come to the anti-retroviral drug. There are thirteen anti-retroviral drugs, out of which twelve are pre-95. They cannot be patented. Only one is left. Mr. Arun Jaitley knows all this. I wish you had briefed your party, and I wished you had briefed Dr. Murli Manohar Joshi here unless, of course, you believe that he is not capable of being briefed or he does not want to be briefed. But, anyway, I want to inform the House that there is only one anti-retroviral drug, and there are alternatives. A mention was made here about a drug which got earmarked, with exclusively marketing rights, in 1990, maybe, rightly or wrongly. I am not going to attach anything to it. Maybe, this was something new. One did not know how to respond to it. They got it, and when I looked at it, I found that something needs to be done about this. So, we sent them; we asked them some questions, and in response, the information I got was that Rs. 5 crores worth of that drug has been sold in India on payment and Rs. 340 crores worth of that drug has been sold free. That is the information which I was given. I was concerned about it; I was disturbed about it. They themselves gave these facts. What did they say? Rs. 3.24 crores worth of medicine has been sold, and they have supplied medicine worth Rs. 324 crores free of cost. It happened when there was a previous Government. I am not casting aspersions on the previous Government. But someone know that it has happened. But then these are the facts which even emerge on something about which we also feel sometimes more concerned. We have tried to get this information.

Sir, there is a concern addressed about what will happen when somebody applies, whether the sections of the law are adequate. One friend of mine, Mr. Sharad Joshi, also made points about two sections, sections 2(d) and 2(h)(iii). I am surprised that he thought that there was something wrong with the drafting. Immediately, I had a look at it. I want to answer him. He said, "I challenge you to correct this." I accept your challenge, Mr. Joshi. I would only say this that as regards the points you have made, maybe,

you are looking at a wrong paper or you are making a wrong connection. I would be happy to explain to you that there are no drafting errors. At least in the two cases that you have mentioned, there are no drafting errors. You said, "Just for the drafting errors, I am going to oppose the Bill." I hope, on my assurance, you will not oppose the Bill, but, instead, you will extend your support to us.

Sir, there was a question on ever greening. You have got patents for Aspirin, which was for a headache; now it is for blood thinning. Sir, the law is very clear on this. There was a specific mention on this, a very, very categorical mention. I will not take time of the House in trying to explain that, but I will refer them to section 3. Of course, there were concerns about plants and traditional knowledge. I will refer them to section 3 and section 25. I would like to only suggest this much that this patent amendment which is being made is to bring an end to the continuous process of the amendments, the first amendment and the second amendment.

Sir, there were made many points mentioned by Mr. Yashwant Sinha about the amendments that he had made. He is free to make any number of amendments or to suggest any number of amendments. But they do not relate to the amendments I am bringing in. They relate to the first and the second amendments which their Government brought in, which their Cabinet approved, to which, I am sure, he has applied his mind. But as I said, there can be wisdom and hindsight. I will only request him that these amendments, I believe, have been adequately taken care of, and the concerns which have been expressed by my friends from the Left, have been adequately taken care of. They have been tightened on the point. On very valid concern expressed by some Members .....

SHRI YASHWANT SINHA: Sir, I want a clarification if the Minister may kindly yield.

Most of my amendments that I have moved in the House today relate to the amendments that the Minister had moved in the Lok Sabha at the suggestion, as he has admitted, of the Left Parties; they relate to that Unfortunately, Sir, though I did not make an issue of it, I knew that he had a lunch somewhere. I believe he was not in the House when I intervened in this debate and that, perhaps, is the reason why he has not been able to reply to the points which I raised in 42 minues. But I will let it pass. I will, Sir, with your permission, have another opportunity, when I move the amendments, to emphasise what those amendments are.

SHRI KAMAL NATH: Sir, I have been through the amendments. I have them right here, but I know the points made by him in the amendments, the first and the second amendments, and I will be happy to tell him, it is an amendment to the Second Amendment. The point that I am making is that these are amendments to that. The Second Amendment was brought in by you. Now, you want to make an amendment to the Amendment you have brought in. There could be a validity in that. But that is not the issue at the moment.

Sir, there is another question, a very valid question, which has been raised about the Patent Office. I think, a very valid point was made on the implementation of it. Suppose your have a good law. But if you have bad implementation or if you implementation structure is not correct or appropriate or strong, the good law tends to work not very well. I want to inform the House that we are fully seized of the matter. Adequate Budget outlay has been made. Four offices in Delhi, Kolkata, Chennai and Mumbai are now in the final stage. New offices are being set up. There is new staff. As against the existing 40 people, now there is a sanctioned strength of 280 staff. Maybe, 280 people are also not sufficient. The point is to see that there is sufficient staff, there is staff who understand it so that the implementation is also proper. I appreciate Mr. Fali Nariman's point. I really appreciate his suggestion of having a Committee to look into the points which are required for strengthening the implementation of all these things. I will see to it that the valid points which he has made are taken on board.

I would like to say only this. One of the common concerns was about prices. I know that the common concern was about prices. I would like to say only this on prices. The price is a concern for all of us. As I explained, this Patents Bill is not going to make anything happen from tomorrow. It is not that certain drugs will be deemed to have got patents. There is a process. Nothing is going to happen. No patent is going to come into being. No patent is going to come into being for the next couple of years. It will take three or four or five years to get a patent. And it happens on what? It happens on something which is not in force today. True, there are applications in the mailbox. If you look at the number of applications, we got 8,000 applications. How many were asked for scrutiny? A few number of applications were asked for scrutiny. I really don't know whether those applications are going to be proceeded with.

Whatever it be, we believed with conviction that, on the one hand, it was a TRIPS obligation to bring in this legislation and we had to bring an

Ordinance for that. We had no choice. We had to bring the Ordinance. As I said, we held consultations. I would have brought this Bill in this session much earlier. How many days did the House not work? In the first week, the House did not work, whatever be the reason. It was not my inention to bring it on the second last day of the session. It was only by chance that it has come a day before the House adjourns. If the House had not been disturbed for the first few days, if we had the House running, I would have brought it much earlier.

SHRI YASHWANT SINHA: If you didn't have the Jharkhand issue, the House would not have been disturbed. So, don't go back to the first week and all that.

SHRI KAMAL NATH: I don't want to drag Jharkhand into this. All that I want to say is this. You are saying that this is coming at this point of time. It was not intended. We would have brought it in this session. This is an Ordinance. We could have brought this Ordinance a few days later or a few weeks later. But the time scheduling was such that we could not do that.

I think that I have been able to assure the Members on the points made by them. There are several common points which I have dealt with. I have dealt with the fear of implementation. I have dealt with the drafting errors. I have dealt with the patent office. I think the omnibus point, the point which cut across everybody, was the fear of prices. Let us recognise that nothing will happen tomorrow morning. We only have a new law prospectively, a new law which is not for the multinationals, a new law which, I believe, is going to strengthen our pharmaceutical industry, a new law which is a tribute to our scientists and laboratory technicians, anew law to a new generation of Indians. I hope the House will support this Bill. Thank you.

MR. CHAIRMAN: I shall first put the motion moved by Dr. Murli Manohar Joshi to vote. The question is:

"That this House disapproves the Patents (Amendment) Ordinance, 2004 (No. 7 of 2004) promulgated by the President on the 26th December, 2004."

The motion was negatived.

MR. CHAIRMAN: I shall now put the Motion moved by Shri Kamal Nath to vote.